IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 2:05-00003
	)	
YOUNG MOON,	)	
	)	
Defendant.	)	

- -

BEFORE THE HONORABLE TODD J. CAMPBELL, CHIEF JUDGE

TRANSCRIPT

OF

PROCEEDINGS

April 24, 2006

Sentencing Hearing

- -

APPEARANCES:

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I N D E X

The above-styled cause continued to be heard on April 24, 2006, before the Honorable Todd J. Campbell, Chief Judge, when the following proceedings were had, to-wit:

THE COURT: We are here to take up the case of United States versus Young Moon. The purpose of the hearing is a sentencing. There are a few preliminary matters we need to take up. The first is on Friday, a motion to continue was filed and the government has filed a response in opposition. Ms. Thompson, can you tell me which parts, if any, of the ex parte affidavit that you filed and the attachments thereto were served on the government?

MS. THOMPSON: The affidavit and the attachments were not served on the government, Your Honor.

THE COURT: Is there any objection to serving a copy of the memorandum by Dr. Jackson on the government?

MS. THOMPSON: Well, at this time, Your Honor, Friday night Dr. Moon telephoned me at home and told me that she did not want to proceed with my motion and she did not want to continue the matter. We have again met about that this morning and she feels very firm in her belief that she does not want to continue this matter. She does not request a continuance, and she would like for me to strike that motion. That's against advice of counsel, but I wanted to make it clear on the record.

I did call the government or I spoke with the U.S.

Attorney earlier today and told her that I thought we would be striking our motion to continue and my request that I filed.

THE COURT: All right. Well, I will allow you to withdraw the motion, but I think that the government is entitled to see the letter from Dr. Jackson unless you convince me otherwise. I don't see any attorney-client privilege in there.

MS. THOMPSON: I don't have any strong objection to that.

THE COURT: All right. Mrs. Bush, would you hand this to counsel. I want to make sure that the government is aware of the information in there before they take whatever position they want to take. Yes, ma'am.

MS. THOMPSON: I would ask, Your Honor, that the affidavit that I filed remain under seal and ex parte but remain as part of the record.

THE COURT: It is. It has currently been filed ex parte, meaning it has been served only on the Court and not on opposing counsel. It is at Docket Number 284. And there are two different attachments to it, and none of that has been served on counsel for the government other than the item I referred to earlier, which is Exhibit B to your ex parte affidavit.

MS. THOMPSON: That exhibit would also remain

under seal; is that right, Your Honor?

THE COURT: Yes. I provided it to the government so they could have it for this proceeding, but it is not to be made public. Ms. McIntyre, Ms. Thompson has said that she has been directed by her client to withdraw the motion to continue. What's the position of the government?

Is that a fair characterization of your position, Ms. Thompson?

MS. THOMPSON: Yes, Your Honor.

MS. McINTYRE: Would you want me to --

THE COURT: I can hear you better. Thank you.

MS. McINTYRE: Your Honor, as we stated in our opposition to the defendant's motion on Friday, we think there is certainly no evidence, no basis for the motion to continue in this case. I am happy to speak more specifically to whatever what we suppose is in the sealed attachments. But are you comfortable with me doing so in this public forum?

THE COURT: What I want to know is whether you oppose the motion to continue knowing what I have handed you and that it could result in collateral litigation some day.

MS. McINTYRE: Yes, Your Honor, we definitely do oppose it. We think it is unnecessary, and we also think that the standard setup by 18 U.S.C. Section 4244(a) has not been satisfied in this case, and that just clearly has not

been satisfied.

Again I could speak more specifically to that, but I don't know how much you want me to get into.

THE COURT: I want to make sure you had formed an opinion. Ms. Thompson, anything else you want to say?

MS. THOMPSON: No, Your Honor. I do have another preliminary matter about something else.

THE COURT: Let me rule on this first. I am going to allow you to withdraw the motion to continue. And I have looked at what you filed, and I have looked at the standard under 18 U.S.C. Section 4244 and don't think that there is substantial information that's required under that particular statute, so we're going to go forward with the sentencing today. I will put my reasons in more detail in writing filed under seal after this proceeding.

Ms. Thompson, you also had a motion to exclude certain written statements and witnesses. Is that what you wanted to address?

MS. THOMPSON: No. I was just going to address Mr. Simmons' presence. He is here today just to assist me. It was pretty complex matter with lots of paperwork, but he is not to be entered as counsel of record.

THE COURT: If he is sitting there, he is counsel to this proceeding and he is counsel of record.

MS. THOMPSON: Okay. I just didn't want --

THE COURT: You either are or you aren't. I am not trying to trap you into further work.

MR. SIMMONS: That's fine.

THE COURT: The record needs to reflect that he is here and representing Dr. Moon and assisting Ms. Thompson. He is welcome here. He is a fine lawyer.

All right. The first thing I need to do is determine whether Dr. Moon has read the presentence report. Ms. Thompson, has Dr. Moon read the presentence report?

MS. THOMPSON: Yes, Your Honor, she has been provided a copy of presentence report. She's reviewed it, and we have discussed it.

THE COURT: All right. There are a number of objections. There is an objection to the intended loss. There is an objection to the number of victims enhancement. There is an objection to the sophisticated means enhancement. There is an objection to the risk of death or serious bodily injury enhancement. There is an objection to the vulnerable victim enhancement.

The government objects to that as well. The government seeks a four-level increase, and the defendant seeks no increase.

There is an objection to the abuse of trust or use of special skill enhancement. There is an objection to the obstruction of justice enhancement. Those are by the

defendant.

The government objects to the lack of a recommendation regarding fine.

The defendant also objects to the summary of the offense conduct and the victim impact and the lack of a recommendation for voluntary surrender.

And there is an objection regarding a ban on healthcare employment if it constitutes a lifetime ban rather than a condition of supervised release.

And then there is a motion to exclude written statements and oral testimony of former patients.

It is my understanding that the government would have the burden of proof on the enhancements. Do you agree, Ms. McIntyre?

MS. McINTYRE: Yes, Judge.

THE COURT: Okay. Is there anything anybody else wants to say about the motion to exclude written statements and oral testimony? The government filed a response, and I of course had the initial motion.

MS. McINTYRE: Your Honor, I would like to address two things. First we just wish to inform the Court that the three out-of-state witnesses did travel all the way, and they are here. And we wanted to mention that we would like to invoke the rule but on the other hand point out that under the victims rights law, victims they have the right, and I am

quoting, not to be excluded from any such public court proceeding unless the Court after receiving clear and convincing evidence determines the testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.

Thus, our position is that the victims, even those who are testifying, have the right to remain in the sentencing hearing during other people's testimony, but we wanted to flag this issue for the Court so that you are aware of it and they are in here right now.

THE COURT: Ms. Thompson.

MS. THOMPSON: Yes, Your Honor. I would like to address the Court and state that I believe that the government at this point is being disingenuous with us. During the trial in this matter, the defendant wanted to put in proof about outcomes of patients, and at that time the government argued that patient harm was not an issue. That this was a fraud case. Now, at this point in the proceedings at the sentencing hearing, they want to put in patient harm as an aggravating factor. And I'd say, one, that's disingenuous for them to change their argument, and then, two, that the patients in this matter do not meet the statutory definition of victim.

First of all, this is not a malpractice case. This is not a medical malpractice case. This is not a tort

claim. This is a fraud matter. And, Your Honor, if you specifically look, one, at the victims' rights statute which the government has cited, it is 18 U.S.C. 3771 of course, it says that they have to show that a victim is defined under Subsection E as a person directly and proximately harmed as a result of the commission of the federal offense. And Your Honor, I would state that there is actually an enhancing factor to the fraud charge that if the government can prove beyond a reasonable doubt that the person has caused somebody bodily injury that that's an enhancement and actually ups the statutory mandatory minimum or sets a mandatory minimum in terms of a sentence. It is statutory. If the government was not able to indict Dr. Moon based on that statute that because it specifically statutory provision that the government cannot now claim at sentencing and enhance my client's sentence based on victims when they weren't able to show that. That would just be a clear violation of Booker. So I would say that they can't bring in the victims now.

Furthermore, Your Honor, in terms of who is a victim, the government claims in -- that these people that the patients would be victims because they were proximately harmed as a result. They said that they in paragraph 3 on the first page of their motion say these patients are directly and proximately harmed by Dr. Moon's healthcare fraud in that they were either definitively shorted on their

full dose of the cancer treated drugs or they may have been so shorted.

Well, Your Honor, at this point they don't have proof and even by a preponderance of the evidence certainly not beyond a reasonable doubt that any one particular person that they are going to call to testify or that letters have been presented from were either one of even specifically shorted a dose. All the government has is a total amount of drugs purchased and a total amount of drugs billed for. So, one, they couldn't show that anyone was specifically shorted a dose. And then, number two, they cannot show that a person was harmed. I mean next they have to show direct and proximate harm. And the government cannot show which individual was proximately harmed or directly harmed by either having a shortage dose. That that somehow would have affected their outcome medically. So those two things they cannot show.

And then finally, Your Honor, the defense did present at trial some evidence that showed the Dr. Moon had a good outcome as to her patients that she treated. Dr. Foon when he testified specifically said -- I have the cite in the rough transcript.

THE COURT: I remember his testimony.

MS. THOMPSON: So, Your Honor, he said that overall her results were better than most results. So I

would say based on that then there is no showing whatsoever even just a preliminary matter that there is any approximate or direct harm caused to these people.

I cited in my motion and would just point to the case of United States versus Jacqueline Carol Yager. And in that case they just talked about this was more of a loss and who was a victim, but this is a Sixth Circuit case where they specifically said that people who might have lost money -- it was about losses in money. That a person who might have lost some money in a banking scheme if the money had been replaced or it was just for a short time or a small amount that they would not be considered victims. And I'd say the same is here, Your Honor. If it is too vague. And specifically the guidelines say that emotional harm is not harm that you can consider in determining a victim. So I would say specifically based on that, there is no showing that these people should not be considered victims. And therefore, they don't meet either the guideline enhancement definition and, two, the statutory victim rights law so, therefore, their testimony would be irrelevant as to the sentencing factors in this matter. And I'd ask that the letters from those people be stricken and that they not be allowed to testify at this point.

THE COURT: All right. Thank you. Here is my view. Under 18 U.S.C. Section 3553(a), the Court is to

consider as a sentencing factor the nature and circumstances of the offense, and that includes relevant conduct. To the extent that the government can produce evidence that cancer patients received partial doses of medication, I think that would be relevant conduct regarding the nature and circumstances of the offense.

As for the Crime Victims Rights Act, I believe someone who has received any partial doses of needed medications would be a victim under that act and would have a right to be present and to testify before the Court.

There is a tension between Rule 615 which is commonly just called the rule in terms of sequestration of witnesses and the Victims Rights Act. However, on closer examination, I think that can be resolved in most cases in a fairly straightforward way in that the rules of evidence don't apply at sentencing so that means as a matter of law Rule 615 doesn't apply at a sentencing hearing. It is something that should be considered so that you don't have witnesses conforming their testimony with one another, but it is not mandatory at a sentencing hearing and balancing the victims right against the nonmandatory Rule 615 at sentencing I am going to allow anyone who feels like they are a victim to remain present and to listen to these proceedings. To the extent that it appears that there are efforts to conform testimony, then I reserve the right to change my mind during

the course of the proceeding.

In terms of the rules of evidence not applying, I am relying on Federal Rule of Evidence 1101(d)(3) which says the rules other than with respect to privilege do not apply in the following situations and lists sentencing.

So I am resolving the motion to exclude written statements or oral testimony of former patients by denying it for those reasons.

Ms. McIntyre, since you have the burden on the objections, who would you like to call as your first witness?

MS. McINTYRE: Your Honor, we call Dr. Mace Rothenberg, and I would just note I am not going to rehash matters that we have already covered with him in the trial. Just new matters.

THE COURT: All right.

DR. MACE ROTHENBERG

was called, and being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. McINTYRE:

Q. Good afternoon. In the course of your review of the patient files that you have looked at in this case, did you have the opportunity to form an opinion about whether defendant Dr. Young Moon's conduct created a risk of serious

bodily injury or death to any of her patients?
A. Yes, I did.
Q. Can you describe what your opinion was in that regard.
A. When we embark upon treatment of any patient, the treatment is usually based on prior experience published in the medical literature based on the results of clinical trials. Those trials outline what drugs to use, what doses to use, how often to give them and what the outcomes as well as side effects might be.

We then base our treatment of patients on those studies. When we counsel patients regarding how they may benefit and what the risks and benefits are of that treatment, it is based on those studies which those doses of those drugs were given in that schedule. If we deviate substantially from that, we can no longer guarantee or even feel assured that those outcomes will be achieved. And, therefore, I think that that's the basis upon which we treat our patients, and that's the trust that they instill in us when we enter into the physician-patient relationship.
Q. Okay. And in this case I think you -- is it correct that you previously testified that the defendant wasn't necessarily adhering to clinical trials anyway in her courses of treatment?
A. Right. In the review that I performed on the 27 patient records, the side effect profiles in six of those patients

were such that I felt it was highly unlikely that the patient received the doses of drugs that were recorded in the records. And, therefore, I think that unless we have a reason for adjusting the doses substantially and we discuss any deviation from the published standard doses and drugs, then we really haven't informed our patients adequately, and I think that we violated that trust.

Q. And in what way does that lack of information to patients and violation of trust create a risk of death or serious bodily injury to patients?

A. With many, if not all, chemotherapy drugs, there is a lower limit of effect that if you give substantially lower doses than have been given in the clinical trials then you won't be able to get the beneficial effect that was intended and, therefore, that patient could have been harmed by being denied that benefit.

Q. And when you talk about harm and possible harm, is that -- how big of a risk is that when you are dealing with cancer patients?

A. Well, it is very difficult to talk about in individual patient but in general if you deviate by giving lower doses then one would expect that you would have less benefit from those drugs to a point where you can actually lose any and all benefit from that therapy that was intended and, therefore, that patient is at higher risk for having their

cancer progress or return and potentially die from that.
Q. Okay. So in your mind based on your review, did you conclude that the defendants' conduct created a risk of death or serious bodily injury?
A. I think that the actions in those particular patients were consistent with that conclusion, yes.
Q. Nothing further.
THE COURT: Ms. Thompson.
MS. THOMPSON: Yes, Your Honor. May I have just one moment?
THE COURT: Take your time.

CROSS-EXAMINATION

BY MS. THOMPSON:
Q. I want to understand, Doctor. You said that there are certain guidelines developed by clinical studies; is that correct?
A. Those clinical trials are done with doses given at certain way, dose, schedule. The results that are obtained from that whether this therapy has been beneficial to the patient is derived from that data. The more we deviate from that, the less we can be certain that that benefit will be derived.
Q. So the schedule includes both the amount of drugs given and the timing at which they are given?
A. And the frequency, yes.

Q. So you are saying that in standard cancer treatment there is never a deviation from that schedule?
A. That's not what I said. There are commonly deviations from them. Minor adjustments that are made for doses and sometimes for schedule because of mitigating circumstances. Other diseases that the person may have. How frail the patient may be.

When we do deviate from published trials, we will discuss this with the patient, discuss our reasons for that and, therefore, the patient could understand and give truly informed consent to proceed with therapy.

Q. When you deviate from the patient trials for these mitigating reasons, would you consider that to be a risk of harm to the patient?
A. Not always.
Q. Sometimes if you deviate from this schedule based on the frailty if you are making a medical decision based on the frailty of the patient, the stage of the cancer, other diseases, is that somehow harmful or dangerous to the patient?
A. It has the potential depending on how much you deviate, so commonly deviations can be made in terms of ten percent reduction in dose, for instance, or an adjustment of schedule instead of giving four weeks on, two weeks off be given two weeks on and one week off, so that the overall treatment time

is exactly the same so those kind of deviations are commonly done. They are discussed with the patient so that they understand what kind of changes are being made and that they also have to understand that the data that's been presented to them in terms of the benefit is now maybe a little bit less reliable, but they are willing to accept that. And that will be discussed ahead of time with the patient so they can be fully informed.

Q. In general, you can never guarantee an outcome of the patient; is that correct?

A. Not with an individual patient, correct.

Q. And you said that lower doses -- you said it was difficult to tell in a specific case or an individual case what the risk would be; is that right?

A. Clarify that.

Q. You cannot tell me in one individual person's case if I were to pick a name of a patient, you cannot tell me specifically what the risk was to that individual person in terms of having a lower dosage?

A. I don't think you can put a number on it.

Q. You couldn't even be certain that the lower dosage had an effect statistically you can look at a large group of people but on an individual person you can never know for sure what had an effect and what didn't; is that correct?

A. Correct.

Q. No further questions.

THE COURT: Any redirect?

MS. McINTYRE: Can I have one moment, Your Honor?

THE COURT: Yes, ma'am.

REDIRECT EXAMINATION

BY MS. McINTYRE:

Q. Is controlled deviation from medicine schedule what happened in your review of the six patients?

A. No.

Q. Is it ever acceptable to deviate from the schedule without discussing that with the patient?

A. I think in terms of fulfilling informed consent so the patient could make a appropriate decision for themselves, but that's not appropriate. So in my own practice when I will be deviating, I will explain why I am changing it from the standard and the reasons for that and so that the patient may understand and accept or decline that treatment. So I think it is very important to explain that to the patient ahead of time.

Q. And when there is a lack of informed consent in your opinion, does that itself create a risk of serious bodily injury to cancer patient?

A. Potentially because we could never assume what our beliefs are applied to that patient in terms of willingness

to accept risk and benefit in that ratio.
Q. Thank you, sir.
MS. THOMPSON: I do have a followup.
THE COURT: Okay, go ahead.
RECROSS-EXAMINATION
BY MS. THOMPSON:
Q. You are saying that a person needs to have consent, a patient needs to consent. If they don't, they risk serious bodily injury?
A. I think there is a process of consent, not just a written form that there is a discussion ahead of time that includes making sure the person understands their disease the treatment option is the risks and benefits of those treatment option and that's part of the initial interaction between the patient and physician and family and sometimes the patient will disagree with the physician and will seek other medical care. That's only after there is this kind of communication.
Q. But that has to do with either trust or the relationship between doctor patient. What the patient knows about their treatment does not cause or prevent serious bodily injury, right?
A. I think it is their understanding and willingness to accept that risk benefit ratio that's important here.
Q. But that's different than it causing serious bodily injury. What I understood the U.S. Attorney's question to

you to be was the lack of this consent and the lack of this information, does it increase the risk of serious bodily injury? And your answer was yes?
A. I think that if the patient is not fully informed then their risk of benefit may have been impaired by an ad hoc reduction in doses or the risk of harm may have been increased again by the same kind of ad hoc adjustment of the doses. And they have not been made a part of this discussion so that they could make the decision and after all, it is the patient that's being affected by all of this and they should have the final say and be fully informed so they can make the appropriate decision for themselves.
Q. Maybe I am not communicating my question clearly. It doesn't matter what the patient knows or thinks about whether or not they are caused serious bodily injury. Do you understand what I mean by serious bodily injury?
A. I don't agree with that doesn't matter what the patient thinks or knows. It does matter what the patient thinks or knows, and that is conveyed by the physician as part of their responsibility.
Q. But it doesn't change whether or not they suffer serious bodily injury. They might have chosen --
A. It changes their risk.
THE COURT: You guys take turns. You are talking over each other. Go ahead with your question. State your

question again, please.
BY MS. THOMPSON:
Q. It might change the decision that they make. It might change their relationship with their doctor. But it does not physically change what would happen with the medication or would not happen with the medication. Consent or knowledge doesn't change the physical outcome to the person's body; is that correct?
A. I am afraid I don't understand the question.
Q. My question is you said that there was a risk to serious bodily injury if the patient did not know what form of treatment they were receiving. Can you explain that in more detail for me what do you mean by that?
A. Well, in an extreme case I could say I am giving you therapy to prevent recurrence of your cancer and you say well, I think given what I know that that is reasonable. And then I can turn around and give none of therapy. That would increase that patient's risk of having a relapse and death from that and have the potential to cause serious bodily harm up to and including death.
Q. But it is not the conversation that occurs between the two people that changes whether or not there is a risk of death. It is the specific treatment they are receiving?
A. Correct.
Q. So whether a person knows what treatment they are

receiving or not doesn't increase or decrease their serious bodily injury. It is the treatment itself; is that what you are saying?

A. Yes, I guess that would be true.

Q. Okay.

THE COURT: Anything else from this witness?

MS. McINTYRE: No, Judge.

THE COURT: Thank you, sir.

(Witness excused.)

THE COURT: Who is our next witness?

MS. McINTYRE: Your Honor, we call Sharon Matheny.

THE COURT: All right. If she could step forward, please.

SHARON MATHENY

was called, and being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. McINTYRE:

Q. Good morning. Or good afternoon, Ms. Matheny.

A. Good afternoon.

Q. Where did you go to college?

A. I went to Middle Tennessee State University in Murfreesboro.

Q. When did you graduate with, what degree?

A. I graduated in December 1981 with a Bachelor's in

accounting.
Q. Where do you currently work?
A. I work for the Tennessee Bureau of Investigation.
Q. And what is your position there?
A. I am an auditor for in the Medicare Fraud Control Unit.
Q. What does that mean?
A. The Medicaid Fraud Control Unit or Auditor 4? I am sorry.
Q. Auditor 4, please.
A. Auditor 4. I am my position assists the other agents in the unit with the preparation of spreadsheets and accounting issues to help them prepare and document their case for presentation to juries, courts, et cetera.
Q. Okay. How, if at all, do you use your accounting background in your current job?
A. I will get documentation from the various agents. It may be bank records, invoices, billing records, and I take those records, analyze them and document them in spreadsheets to present to further explain in a summary method the documentation.
Q. As part of your job, have you been asked to do some work on the investigation of the defendant insofar as this sentencing hearing is concerned?
A. Yes, I have.
Q. And what were you asked to do just for this sentencing

hearing?
A. I was asked to review the spreadsheets that the agent prepared. They were the intended fraud worksheets. They were summary worksheets. Patient listing for the various drugs. And private other insurance company records.
Q. Okay. And did you review some trial exhibit or parts of trial exhibits in order to do that?
A. I did.
MS. McINTYRE: I'd like to first show the witness what we're marking as Government's Exhibit 1 and due to me being a little bit slower although I am doing well today, I am asking my co-counsel to help by handing copies out to everyone.
THE COURT: That's fine. Thank you.
BY MS. McINTYRE:
Q. Do you recognize this document, ma'am?
A. Yes, I do.
Q. What is it?
A. It is the intended fraud amount summaries for the three separate drugs Taxol, Procrit and Camptosar, and the fourth schedule is the summary of all three drugs that summarizes the total.
Q. Do you know who created this?
A. Bob Turner.
Q. And he is the agent with the Department of Health &

Human Services on this case?
A. Yes.
Q. Can you briefly explain to the Court what Table 1 shows in terms of what it means by the total amount billed by Dr. Moon from insurance for treating patients with Taxol or Onxol during the indictment time period?
A. The total billed figures and intended figures are the total that was billed by Dr. Moon and this was during the trial we had spreadsheets that showed the amount billed, the amount received that she received. And this total bill for Medicare I took the summary, the spreadsheets from the trial and summarized for Taxol for that one drug how much was the total billed for Medicare, TennCare, private Blue Cross Blue Shield and private other insurance companies.
Q. Okay. And what was the total amount that the defendant billing during the indictment time frame as shown on this chart?
A. For Taxol, it was $1,559,483.80.
Q. And does the chart then apply the fraud percentage shown at trial to that figure to determine the amount of intended or billed loss?
A. Yes, it does.
Q. Okay. And what was that total for Taxol Onxol?
A. For the amount of intended fraud loss for Taxol, it was $763,201.

Q. Does that translate into the amount that the defendant actually billed these insurance companies for Taxol Onxol when she did not actually deliver those drugs?
A. Yes, ma'am.
Q. And were you able to verify that the amount on that this chart is accurate?
A. Yes, I did.
Q. Turning to Table 2, the next page of this exhibit, is this roughly the same analysis as applied to the drug Camptosar during the indictment time frame?
A. Yes, it is.
Q. Were you able to determine if this table was also accurate?
A. Yes, I was.
Q. Okay. And was it accurate?
A. Yes, it was.
Q. And in this table, does it apply the percentage from the trial, the fraud percentage shown at trial for Camptosar?
A. Yes, it does.
Q. And when applying that fraud percentage for Camptosar, what does this table and your analysis reflect was the total amount of intended or billed fraud loss for that drug?
A. $479,813.
Q. Okay. And turning to the next table, Table 3 in this exhibit, does this apply the same analysis as we have been

discussing to the drug Procrit?
A. Yes, it does.
Q. And does it also apply the fraud percentage shown at trial for Procrit to the amount that she billed total for that drug?
A. Yes, it does.
Q. What was the total amount of intended or billed fraud loss for Procrit during that time frame?
A. $52,639.
Q. And turning to -- was that analysis on Table 3, was that also accurate? Could you verify it?
A. Yes, it was accurate.
Q. Turning to Table 4 I think you already said this, but does this simply add up the totals that we have just gone through on Tables 1 through 3 to the total amount for all three drugs during the indictment period?
A. Yes, it does.
Q. And what is that total?
A. $1,295,653.
Q. What does that figure represent?
A. That figure represents the intended amount of fraud loss based on the total that Dr. Moon billed which was determined during the trial times the individual fraud percentage rates which were also proven during the trial.
Q. So she submitted bills for these amounts, and this

corresponds with the percentage of those bills that was fraudulent?
A. Yes, ma'am.
Q. Was that all accurate, everything in Table 4?
A. Yes, ma'am, it was.
MS. McINTYRE: We move Government Exhibit 1 into evidence.
THE COURT: Granted.
BY MS. McINTYRE:
Q. I would next like to show you Government Exhibit 2. Do you recognize this exhibit?
A. Yes, I do.
Q. What is it?
A. It is the list of patients that were private other insurance companies meaning we had private Blue Cross Blue Shield and then we had private other. And those are the other individual private insurance companies which were billed by Dr. Moon for services.
Q. So these patients necessarily didn't have Medicare or TennCare; is that right?
A. Yes.
Q. And is that a list of -- and who prepared this document?
A. Bob Turner with HHS.
Q. Okay. I'd next like to show you Government's Exhibit 3. Do you recognize this exhibit?

A. Yes, I do.
Q. What is it?
A. It is an exhibit of the applied views of the patient histories from Dr. Moon's office.
Q. Okay. And did you use the information in Exhibit 3 to determine if the chart in Exhibit 2 was accurate?
A. Yes, I did.
Q. Can you walk the Court through how you were able to verify what's in Exhibit 2 by the raw data in Exhibit 3?
A. On page 1 it is U.S. 385.
Q. Are you talking about three, right?
A. Exhibit 3, yes, ma'am. The patient name it is Chart Number 150, and the name on it is Charlene Less. It shows here from looking at this applied view that the patient had private insurance summarized by HP. And it shows the drugs that she was administered and I used that Charlene Less is the first patient that's on Exhibit 2, and the HP shows her insurance private other insurance as HP on Exhibit 2.

MS. THOMPSON: Your Honor, at this point I am going to object to this testimony as being irrelevant to what's going on. These are other insurance companies. They were not included in the indictment, Your Honor. And I would say that under Booker they don't come in. The guidelines may be advisory, but we still have the rule of Apprendi in that there is no reason for the government to present proof that

is not part of the indictment in terms of enhancing sentence.

THE COURT: Response.

MS. McINTYRE: It is relevant conduct, Your Honor. And the sentencing guidelines which of course are a factor that the Court must consider as part of its decision specifically has a provision about the number of victims. And as defense counsel pointed out earlier, one of those victims' provisions has to deal with economic loss. This portion of the testimony about loss to other private insurance companies is directly on point to that issue, which of course is a sentencing guideline consideration.

THE COURT: I am going to overrule the objection. Think it goes to the enhancement that's proposed in the presentence report regarding the number of victims and whether any of these insurers are victims. Go ahead.

BY MS. McINTYRE:

Q. Ma'am, I just want to make sure that everyone understands because I know this chart has a lot of different entries on it. When you say HP, are you referring to the column that says Carrier and then says Pay -- looks like it stands for Pay Source. Is that where HP is listed repeatedly for this patient?

A. Yes, it is.

Q. Is HP in your judgment, is that another private insurer?

A. That's private other insurer.

Q. And does the fact that her applied view lists HP as her private insurer, is that what Exhibit 2 states for her as her primary insurance?
A. Yes, it is.
Q. Okay. Turning to the next page of Government Exhibit 3, does that refer to patient Paul Olandorf?
A. Yes, it does.
Q. What does this document indicate that his first and secondary insurance companies are?
A. Page one shows his primary is CNL. And page two shows a secondary of CON.
Q. And turning to the next patient, Lyla Powell, what is shown for her as her private other insurance?
A. COMG.
Q. And turning to the next page for patient, Udean Richardson, what insurers are shown for him?
A. At first it shows TennCare, and secondly it shows UCT.
Q. Is that listed next to a bill for the drug Procrit on the page Bates stamped U.S. 555?
A. Yes, it does.
Q. Does that indicate that UCT was his secondary insurer after TennCare?
A. Yes, it does.
Q. Turning to the next patient entry on U.S. 565 of Government Exhibit 3, is that for patient Ruby Simpson?

A. Yes, it is.
Q. And are there several private other insurance carriers listed for her?
A. Yes, there were.
Q. Can you tell us who they are.
A. MC1, USA HW, AFLAC and STERL.
Q. And do those correspond with the private other insurance companies listed on Government Exhibit 2 for this patient?
A. Yes, they do.
Q. Turning to the next patient on Government Exhibit 3, Janet Stout, what private other insurance carrier is listed for her?
A. CS.
Q. Okay. And turning to the next patient, Sheila Taylor, what private other insurance is listed for her?
A. CTR and USAA.
Q. And for the following patient Larry Turner, what does Government Exhibit 3 show as his private other insurance carrier?
A. PLIC.
Q. And for the last patient here, Shirley Wyatt, what is shown for her private insurance carrier?
A. MM and UHC.
Q. Okay. And by going over this review in Government Exhibit 3, were you able to verify that all of the

information in Government Exhibit 3 was correct and accurate?
A. In Exhibit 2?
Q. I am sorry, yes.
A. Yes, ma'am. It was accurate.
Q. Okay.
MS. McINTYRE: We move Government Exhibit 2 into evidence.
MS. THOMPSON: Your Honor, I object at this time, one, based on my previous reasons but also in the fact that this chart is wrong. The witness testified that on Paul Olandorf, his primary insurance was CNL and secondary was CON, and that's not reflected on the chart.
Also testified on Udean Richardson, the primary was TennCare and the secondary was UCT, and that's not reflected on the chart, so I object to this Government Exhibit 2 coming in as being incorrect.
THE COURT: Response.
MS. McINTYRE: Your Honor, as for Paul Olandorf, we're happy to have a witness draw an arrow reversing CON and CNL for him. As for Janet Stout, this chart is just about private other insurance; therefore, TennCare necessarily wouldn't have been listed as, but we're happy to have her make a notation to that effect if you wish.
THE COURT: Well, this is for private insurance. TennCare is not a private insurer, and if you want to make an

adjustment based on who is the first insurance versus second insurance on Mr. Olandorf, you are welcome to do that. I think it is admissible.

MS. McINTYRE: Okay.

BY MS. McINTYRE:

Q. So it is up to you if you want to draw an arrow. But whether CON or CNL was secondary or primary, does the Government Exhibit 3 still reflect that they were both insurance?

A. Yes, it does.

Q. Private other insurance for him. Okay. I would now like you to try to total the number of private insurance companies affected on Government Exhibit 3. I am sorry, Exhibit 2. I apologize.

A. There are 15 private other insurance companies on Exhibit 2.

Q. Okay. And did all of those appear to have paid bills for the drugs at issue in this case?

A. Yes, they did.

Q. So they would have paid bills for the three drugs at issue during the indictment time frame for these patients?

A. Yes, it appears that they did.

Q. Okay.

MS. McINTYRE: Your Honor, we also move Exhibit 3 into evidence although we would note that the applied views

were admitted at trial, and these are simply excerpts from the applied views as they pertain to the private other insurers.

THE COURT: Granted. The objection of the defendant though is preserved.

MS. McINTYRE: I would next like to show the witness Government Exhibit 4.

BY MS. McINTYRE:

Q. Do you recognize this document?

A. Yes, I do.

Q. What is it?

A. It is a ranking of the Taxol patients in relation to the amount of fraud that was the fraud difference that was brought out during trial. The amount that was -- let me gather my thoughts for a second. I used my prior spread-sheet, and this summarizes them. And we have the fraud difference for Taxol and then we rank in order we're trying to determine how many victims from for this drug there were and to spread the fraud difference giving her the benefit of the doubt for the patient that were brought out during trial to have gotten partial dosages they are brought out as if they got none to lessen the number of victims.

Q. And who created this document?

A. Bob Turner created this.

Q. Okay. And did you make an effort to verify his work?

A. I verified the work, yes, ma'am.
Q. Was it accurate?
A. It was accurate.
Q. Okay.
MS. McINTYRE: We move Exhibit 4 into evidence.
THE COURT: Granted.
BY MS. McINTYRE:
Q. Just sort of going through this chart, the first part of Exhibit 4, does that list the Taxol patient who got partial doses per Dr. Rothenberg's testimony?
A. Yes, it does.
Q. And are those patients Herbert Cordell, Richard DeMars and Howard Edwards?
A. Yes, they are.
Q. And in this chart, does that give the benefit of the doubt to the defendant by assuming that they got zero percentage of the medicine that they were billed for Taxol and Onxol?
A. Yes, it does.
Q. And can you explain does this document, does this chart then subtract the amount of the fraud loss shown at trial, the 51,964 milligrams, and then subtract from that the amount that these three patients got total; is that what it does?
A. Yes, it does.
Q. And even after those three patients are subtracted out

and everything that they were charted as getting for that drug, was there still a remaining fraud difference of 36,962 milligrams.

A. Yes, there was.

Q. Okay. And then does the chart next assume that Billy Jones who there was also testimony about at trial him not getting a dose he was billed for, does it also subtract out the total dose that he got ever for Taxol Onxol?

A. Yes, it does.

Q. And then after that is subtracted out, was there still a remaining amount of Taxol, Onxol that hadn't been given per the trial testimony?

A. Yes.

Q. Okay. And how were the next patients arrived at?

A. The Taxol patients were ranked by the patient that got the highest amount of dosages in milligrams, and so after you take out the first four patients that you previously discuss then we took the next highest and then in decreasing order until the fraud amount was gone.

Q. Okay. And how many patients did that show could not have if they didn't get any of the dose billed and both by the trial testimony and then by the patient who got the -- should have gotten the highest doses per their charts, how many patient total would have been affected under that analysis per these charts?

A. Nine patients.
Q. Okay. And I noticed that there is a column here for Procrit patient. Why is that?
A. That is so that we can determine if they also got Procrit so they are not counted twice as victims. They are only counted once.
Q. Okay. But just looking at the total number of Taxol patients affect here by this analysis that gives her a lot of benefit of the doubt, that still does that still show that nine patients wouldn't have gotten their full doses of Taxol?
A. Yes, ma'am.
Q. I would next like to show you Government Exhibit 5.
MS. McINTYRE: Your Honor, I am not sure I moved Government 4 into evidence. If not, I move it.
THE COURT: I don't believe so. Granted.
BY MS. McINTYRE:
Q. Thank you. Do you recognize Government Exhibit 5?
A. Yes, I do.
Q. What is it?
A. It is the ranking of the Camptosar patient during the indictment time frame to determine -- to spread out the fraud difference that was brought out in trial.
Q. And was this also created by Agent Turner?
A. Yes, it was.
Q. Were you able to verify that the information on this

chart is accurate?
A. Yes, it was accurate.
MS. McINTYRE: We move Government Exhibit 5 into evidence.
THE COURT: Granted.
BY MS. McINTYRE:
Q. Just briefly does this roughly use the same method of analysis that we just went through with the Taxol Onxol?
A. Yes, exactly.
Q. So the first part of it, does that assume that the three Camptosar patients who Dr. Rothenberg felt did not get full doses that they actually got zero dose and you can subtract that from the fraud amount for Camptosar?
A. Yes, it does.
Q. After that, does it then apply then subtract out the total amount that Sheila Taylor who there was also trial testimony about that she didn't get any of her Camptosar either?
A. Yes.
Q. After those patients are subtracted out, is the next patient the person who was got had the next highest amount charted for Camptosar?
A. Yes.
Q. And how many patients does that show total it would take to account for the fraud loss for Camptosar?

A. Five.
Q. And in that five, does that include an assumption that they all got zero percent of what they were charted for getting as opposed to just a partial dose?
A. Yes.
Q. So in that way it gives her the benefit of doubt?
A. Yes, it gives her the benefit of the doubt on the number of victims.
Q. You mentioned I see again this Procrit patient column. Does that again show who got Procrit and who didn't?
A. Yes, so that they are not included twice as victim.
Q. Okay. But that shows that there were five Camptosar patients in general who could not have gotten if they are looking at the zero percentage analysis who could not have gotten the full dose; is that right?
A. Yes, ma'am.
Q. I'd next like to show you Government Exhibit 6.

Do you recognize this?

A. Yes, this is the list of patients that got Procrit that was prepared by Bob Hunter -- Turner, excuse me.
Q. This covers the indictment time frame?
A. Yes, it does.
Q. Were you able to verify if the information on this chart was true and accurate?
A. Yes, I did, and it was accurate.

MS. McINTYRE: We move Government Exhibit 6 into evidence.

THE COURT: Granted.

BY MS. McINTYRE:

Q. Does the first part of this chart simply reflect the patient who only got Procrit as opposed to getting Taxol, Onxol or Camptosar?

A. Yes.

Q. How many were in that group?

A. The ones that only got Procrit were 40.

Q. Forty different people?

A. Forty different patients.

Q. Does the next category show the patient who got Procrit and Camptosar both?

A. Yes.

Q. And when you add those in, what does the number grow to?

A. Forty-seven.

Q. Okay. Then when you go to the number of people who got Procrit and Taxol together, how many would be on that list?

A. That brings the total to 69.

Q. Okay. And of course we have already mentioned that some of these Procrit patients also got Taxol or Camptosar?

A. Yes.

Q. When you account sort of avoid double counting those patients, how many individual people are there who either by

Government Exhibit 4 and 5 couldn't have gotten their Camptosar and Taxol or who couldn't have gotten Procrit per other trial testimony, how many does that leave?
A. May I see Exhibit 4 and 5 again, please.
Q. Sure.
A. We had 69 on the Procrit list, and then from the Taxol list that was I think it was Exhibit 4, we would have added four which would have been four and 69, 73. And Exhibit 5, we add another two which would bring the total to 75.
Q. Okay. So would that reflect just to be clear that even giving the defendant the benefit of the doubt regarding Camptosar and Taxol and then including all of the Procrit patients during the indictment time frame that there would have been 75 different people who could not or did not get the doses charted and billed for?
A. Yes, ma'am, 75.
Q. Seventy-five different patients?
A. Seventy-five different patients.
Q. Okay. I have nothing further.
THE COURT: Your witness.

CROSS-EXAMINATION

BY MS. THOMPSON:
Q. I want to first ask you about this Exhibit 1 that you testified about. Now, I see three -- there is Medicare, TennCare and Blue Cross Blue Shield listed as the top three

insurance companies; is that correct?
A. Yes.
Q. Now, for Medicare, TennCare and Blue Cross Blue Shield, each insurance company negotiates their own rate of benefit or charges. They negotiate with doctors and hospitals, and their providers on their provider list an amount that they will reimburse for a certain product; is that correct?
A. I have no idea. I don't -- that's not part of my job.
Q. Okay. So when you are trying to figure out these numbers, you don't know how much each individual insurance company paid for, let's say, Taxol, correct?
A. No.
Q. You don't know how much they paid for a dose of Taxol?
A. No, I just this chart only shows total billed.
Q. Okay. So if over time between '99 and 2001 the price of Taxol increased per dosage and the contract that the doctor or the provider had with the insurance company to pay back a different amount changed, it is not reflected in these total numbers?
A. No. It is only thing that is on this exhibit is the total that Dr. Moon billed to the various insurance companies during the indictment period.
Q. Okay. So work with me here then. If let's say in the year 1999 there were $500,000 of Procrit billed for let's say during that year she ordered none and it is given a value per

dosage like a dollar per vial or a dollar per dose. That's going to equal a different total than if in the year 2001 each vial has two dollars per dose; is that right?
A. That won't have any effect on this exhibit because this exhibit is merely the total that these insurance companies have in their records that Dr. Moon billed them during the indictment period.
Q. But it would vary because if in, let's say, in 1999 is a year that no Taxol was given but yet Dr. Moon billed for the Taxol, if it's got a different rate of reimbursement that does change the formula if then in the year 2001, the rate of reimbursement is higher. You could alter the amount of intended loss by changing the amount that each dose is reimbursed for if you have different doses that are actually shorted in different years?
A. No, the intended loss on this exhibit is merely based on the fraud percentage that was determined during the trial for the indictment period for each individual drug times the total amount the Dr. Moon billed during the indictment period. It has nothing to do with reimbursement rate. It is the total amount that she actually billed. That she sent for the to the insurance company asking for reimbursement.
Q. So depending on any year it was and how much the Taxol amount was for reimbursement per dosage would not change the total outcome in terms of loss?

A. Not on this schedule it wouldn't because reimbursement rate has nothing to do with the amount billed.
Q. Doesn't that assume that then each year the fraud percentage is the exact same of 48.939 percent?
A. No.
Q. If the first year you have a hundred percent of fraud and the last year you have zero fraud, would that not then change the outcome total?
A. That was the total fraud percentage determined during trial. I don't know how else to explain it. It was based on the indictment period the total period on what she was paid. May I get my prior spreadsheets to look at?
Q. Sure.
A. During trial the fraud percentage rate as shown on this Exhibit 1 for Taxol being 48.939 percent, that fraud percentage rate was determined by taking the drugs purchased plus the overfill, taking the overfill into consideration, divided by the drugs purportedly administered, and that's what determined that fraud percentage rate. And that was determined during trial. Taking that fraud percentage rate which was over the indictment period, multiplying it by the total that Dr. Moon billed each individual insurance company, TennCare, Medicare, Blue Cross Blue Shield and then the private others together is how we determined or how, excuse me, how Bob Turner determined the amount of intended fraud

loss.
Q. Let me ask you this question. The Medicare reimbursement amount, did you give her any credit for what might have been the fair value such as the amount that Medicare gives in reimbursement is different than the amount TennCare would give for reimbursement which might be different from Blue Cross Blue Shield. Do you agree with that?
A. I have no idea. That didn't come into it. I got his summaries and determined that the total billed that is the total that Medicare stated during the indictment period Dr. Moon billed them for her patient. That's the total that Medicare showed as billed. And these spreadsheets were determined were used during trial and determined to be correct.
Q. Okay. Here is where I think that the problem the flaw is in this logic if you don't take into account which year it was billed and how much it was billed for like not just the year but when the price changes. So let's say that you take this 48.9 percent fraud, that's the average fraud over the period of the indictment; is that right?
A. May I restate that? I believe, okay, we have each individual patient listed on these spreadsheets. So the one patient his service dates of service were in 2000, 2001. And they are billed at different dollars billed for units and

that.
Q. Right.
A. So I mean this spreadsheet would determine would be different for different years. Some years let's say he was billed six units were billed $2400. Other years they might have been billed at $2800 on in latter part of 2001. So they are actual amounts billed individual date of service all totalled up for all of the patients for one drug and then the difficult -- then the fraud percentage rate is multiplied times the total amount billed. The fraud rate was determined during the trial for Taxol to be 48.939 percent.
Q. But the fraud rate requires that the same amount of fraud percentage apply to each period when the money is charged. So if you have a unit of drugs that cost one dollar this year and let's say there is no fraud on that and you buy ten units so there is zero percentage of fraud that year. And then the next year a unit of medicine costs $100 and you bill for 100 units and you if you then bill for 100 units and buy none, that's a hundred percent fraud. And if the price goes up that second year so that each vial is worth a hundred dollars, that's a thousand dollars worth of fraud the second year and no fraud the first year. But that assumes that the amounts stay the same for each one each year?
A. No. The fraud percentage is determined by actual milligrams, and it is over the entire indictment period. So

you determine your fraud rate by determining how much was purportedly administered less how much was actually purchased plus overfill. You get the difference. Divide it by the amount that was purportedly administered, and you determine your fraud percentage rate. Then that percentage rate is multiplied -- you get your amounts billed which are different for each year for different parts of the year. And you set your percentage, your fraud percentage rate against total amount billed so that would not be, in my opinion, multiplying at different rates because the rate of reimbursement in that is not taken into consideration in this spreadsheet. It is based -- it is totally the total amount that Dr. Moon billed to the insurance companies. So the rate of percentage I didn't look at that when I determined that this was correct. That was not taken into my calculations.

Q. Okay.

A. Because the fraud was already -- the percentage was already determined during the trial.

Q. Very good.

MS. THOMPSON: Your Honor, just one more minute.

THE COURT: All right.

BY MS. THOMPSON:

Q. So just to be clear, since you did not take into consideration the reimbursement rate, the reimbursement rate is never the billed rate; is that right?

A. I have no idea. I just know from the spreadsheets that were given during trial and proven to be correct that the total dollars billed corresponded to the records from the insurance company as being billed from Dr. Moon, and that's what this individual exhibit is based on.

REDIRECT EXAMINATION

BY MS. McINTYRE:

Q. The charts that you have been testifying about, they don't show anything about reimbursement rate, do they?

A. No, ma'am, they show billing, total billing.

Q. They just show the total billed amount slash the intended loss?

A. Yes, ma'am.

Q. Okay. Nothing else.

THE COURT: Thank you, ma'am. You can step down.

(Witness excused.)

MR. WILLIAMSON: Your Honor, can we have a five-minute break for Ms. McIntyre?

THE COURT: Yes, we'll take a five-minute break.

(A recess was taken.)

THE COURT: Who is our next witness?

MS. McINTYRE: We call Diana DeWitt.

DIANA DeWTT

was called, and being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. McINTYRE:

Q. Where do you live, Ms. DeWitt?

A. I live here in Nashville.

Q. And what do you do for a living?

A. I have about four jobs but between music, business things, I sing and also I have a clothing line.

Q. What are the names of your parents?

A. Donald M. DeWitt and Delores M. DeWitt.

Q. Are they still living?

A. My father is.

Q. Okay. And is your mother deceased?

A. Yes.

Q. What was your -- I am sorry, did you also say Delores DeWitt was your mother's name?

A. Yes.

Q. When did she die?

A. August 30, 2001.

Q. Okay. And was your mother previously a patient of the defendant Dr. Young Moon?

A. Yes, she was.

Q. Approximately when was she her patient?

A. She was diagnosed with ovarian cancer on her birthday on

July 17th, 2000, and she was assigned to Dr. Moon and she was her doctor up until she died.
Q. Okay. And why specifically was your mother seeing the defendant?
A. It seemed that people that were diagnosed with breast cancer, ovarian cancer and prostate cancer were pretty much assigned to her from her other doctor. At least that's what I was aware of.
Q. Did your mother have ovarian cancer?
A. 0varian.
Q. Are you aware of what course of treatment the defendant gave to your mother?
A. I tried to, you know, getting on the internet and learn as much as I could about what was going on, and I was with her for all of the chemo treatments. I know that she was given Taxol, Paraplatin, those were two that I am positive of. And also she was taking Procrit too.
Q. Okay. You mentioned that you were with her for her treatments. How was this? Did you drive from Nashville to Crossville?
A. Uh-huh. Yes, it was about every three weeks or so.
Q. Did you go up for every single one of those treatments?
A. Every time.
Q. Did you stay with your mom during those treatments and afterwards?

A. Uh-huh. It would be over a course of three, four days I would be there right before, take her there, bring her back.

THE COURT: Would you mind pulling your chair a little closer to the microphone so I can hear you a little better.

THE WITNESS: Sorry.

THE COURT: Thank you very much.

BY MS. McINTYRE:

Q. Were you able to observe how your mother responded to her chemo treatments?

A. Yes.

Q. Okay. And can you describe to us how she responded in terms of her side effects, that sort of thing.

A. She initially lost her hair after the first initial treatment. She got pretty sick. She was nauseous, throwing up, diarrhea. You know, typical things that you read what is going to happen to you. You know, when you undergo chemo. And that was the initial thing, you know, the hair fell out. Fingernails got messed up. That kind of thing.

Q. Did her reaction change over time?

A. As she was doing the treatments, it seemed she would not be sick. She -- her hair started growing back. She wouldn't be nauseous. She would have her appetite. I would -- I loved cooking for her. I would cook her a meal. She would sit down and eat it. She says, I must be getting used to

this stuff. I am not sick. I feel great. I want to go golfing, you know.

I mean these are some of the things that it just it seemed pretty remarkable.

Q. Okay. And what did you think about your mother's response at the time?

A. Her mother was still alive and has a very strong constitution. Lived to be 102. Outlived mother. And she is a strong, very strong woman, and we just thought that mother was the same way. That she just had a very strong constitution and that she had her mind set to beat this, and, you know, that's why she was just -- she just wasn't having the normal reaction that one would have with chemo.

Q. And did your opinion about why your mother seemed to be increasingly responding well to the chemo, did your opinion about that change over time or at a certain point?

MS. THOMPSON: Your Honor, I'd like to object at this point. I am sure this woman -- and the Court has said she can testify about impact, but it sounds to me like she is giving some medical testimony, Did your opinion about her chemotherapy treatment? I think that's really calling for medical testimony. I am just not sure how this is useful, and I would object it this line of questioning.

THE COURT: Response.

MS. McINTYRE: I am happy to change my question

slightly, but I think that the question was appropriate. It gets at this victim's experience and how this court case has affected it, how the whole episode has affected her personally, and that's why a victim is allowed to testify.

THE COURT: I am going to let her testify, but you cannot pose any questions that call for medical conclusion since she is not an expert.

BY MS. McINTYRE:

Q. I will just go back add one question first and then get to the other one. Did you at some point find out about there being a criminal case or investigation of the defendant?

A. I heard it on the news and saw it in the paper after it initially was put out. Over three years ago when all of this -- I guess I don't know the exact date. It seemed like it was the summer of maybe 2002. Maybe it was the fall of 2002 when I heard about it.

Q. Okay. And after you learned about the criminal case against the defendant, did that change in any way your opinion of your mother's response in terms of side effects?

A. From what I read and from the people that I know that have gone through chemo, chemotherapy takes you within an inch of death. It kills all the living cells. Fast growing cells. And it makes you sick as a dog. And because your body will try to survive, my understanding is this. That she must not been treated with the chemo doses that, you know,

she was taking. I mean they must have been diluted. She must have been one of the cases that was being shorted.
Q. And not in terms of a medical, but based on your observation why did you conclude that?
A. Because she wasn't being sick. Her hair was growing back. She wasn't losing her appetite. She I mean chemo is cumulative, and from what I have read and what I understand, I know I am not a medical nurse.
MS. THOMPSON: Your Honor, I object.
THE COURT: I am not going to let her give medical testimony. She can testify about what information she received and what she concluded from it from a lay point of view, but she is not a medical expert.
BY MS. McINTYRE:
Q. After you changed your conclusion about why your mother was responding well to the chemo, how were you affected personally by that changed conclusion?
A. Well, I was very angry, and I didn't think that -- that is why, you know, I got a hold of Andy Corbitt when I found out TBI was investigating. I just offered any information that I could give from the experience that I had with my mom and her cancer experience with Dr. Moon. And I just, you know, I appreciate being able to come up here and speak today. I know I am not a medical person, but I just want things to be fair.

Q. And how has the loss of your mother affected you personally?
A. It has extremely affected my whole family. My mom was the captain of our team, and we have lost the captain. It is just totally different now. And I miss her terribly. And I ask you to give this woman the maximum. It is not right that someone takes a medical degree and uses it to their benefit for financial gain.
Q. I am just going to give you a minute, ma'am.
A. I am okay.
Q. I know you mentioned that you talked to Agent Corbitt. Have you been very involved in following this case?
A. I came to as much as the trial as I could.
Q. Did you attend any hearings before the trial as well?
A. I came to one that some new evidence had been given and so they postponed it, and it was very short. It was a very short morning that day. And Judge Campbell decided to start the trial later because of new evidence. So there was that. That was before the trial.
Q. Did you also call me personally and case agents for updates on the case?
A. Yes, I did. You are on my quick dial.
Q. And did your involvement in monitoring this case take away from your work and personal life in any way?
A. Well, it is, you know, like I said, it has been very

hard on my family, and we are very close family. And, you know, we are just trying to deal with it. It is one thing losing your mom and then to find out it was because of malicious behavior, it just adds to it.

Q. Is there anything else that you would like to tell the judge in this case?

A. Thank you for listening to me. And I just hope you find it in your heart to give her the maximum. That's what I am asking. And thank you for listening.

THE COURT: Ms. Thompson.

MS. THOMPSON: Your Honor, no questions. May we approach the bench, please?

THE COURT: Yes.

(A bench conference was held as follows:)

MR. SIMMONS: I am Jim Simmons, for the record. Your Honor, it is apparent that there are a number of people here who have lost loved ones. And I think two things that we object to. Number one, is giving an opinion as to what the ultimate sentence should be. I think that's clearly objectionable. That's for this Court to decide. Based upon the facts. They can testify as to what they saw and what occurred to their loved one in the course of cancer. But I think they also cannot give what in fact is a medical opinion the link between the chemo or lack of chemotherapy and the condition of that patient. That a medical conclusion.

I make an objection because it is clearly inappropriate, but I think it would be unfair to these people to object every time that they begin talking in those terms. I just want to make it clear what our objection is.

THE COURT: Okay.

MR. SIMMONS: I would ask -- it is obvious what their opinion is as to the sentence is give her every day you can. But I think it is not victim testimony. I think it is inappropriate victim testimony. You can announce that, you know, that's your decision and not theirs.

THE COURT: Response?

MR. WILLIAMSON: Your Honor, I will say this first of all. I would say their opinion on the sentence goes exactly to the point of Victim Rights Act, why they are now legally empowered to speak and be present at sentencing hearings. I mean, Your Honor obviously can take that in consideration however Your Honor sees fit in fashioning a sentence you think is appropriate. With respect to the medical opinions we will craft our questions to avoid that. To the extent that they do that inadvertent they obviously have opinions why their loved ones did not suffer side effects that usually see from cancer patients. I think Your Honor can cure that in crafting sentence you will not take into medical term given by nonexperts, but we will craft our requests.

THE COURT: The objection is preserved. You don't need to object every time. Having said that, I am not taking this testimony as medical testimony as to causation, proximate causation. These are lay witnesses talking about matters that they are perceiving in an emotional way, and I take it in that perspective. I am bound by the law. I am going to apply the law to the sentencing, and I am not swayed by quest for this sentence or that sentence. I am going to apply the advisory guidelines 3553(a) and listen to your arguments and apply the law. But they are entitled under the Victims Rights Act to be heard. I am filtering their statement through the fact that they are not experts and that I have to apply the law and their request may or may not comply with the law. In any event, it is not fact. It is their rendition of their state of mind.

MS. THOMPSON: Because I think even the last witness that testified her mother died from surgery which was a complication of some intestinal problems and, you know, I am put in the difficult situation do I cross-examine her about that. But then she is not a doctor, so I don't want to cross-examine her and get her medical opinion about the surgery. But, you know, I am not even sure her mother died from the cancer ultimately.

THE COURT: You are welcome to talk to her about that. Thank you.

(Bench conference concluded.)
THE COURT: Your witness, Ms. Thompson.
MS. THOMPSON: No questions, Your Honor.
THE COURT: Thank you, ma'am. Appreciate you coming.
(Witness excused.)
THE COURT: Ms. McIntyre.
MR. WILLIAMSON: Call Donelle Bowman.

DONELLE BOWMAN

was called, and being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. McINTYRE:

Q. Where do you live, ma'am?
A. Lexington, Virginia.
Q. And what do you do for a living?
A. I am self-employed as a graphic designer.
Q. Who are your parents?
A. Donald M. DeWitt and Delores Morelock DeWitt.
Q. And is your mother still living?
A. No, she is not.
Q. And was she previously a patient of the defendant?
A. Yes.
Q. Approximately when was that?
A. It was mid July 2000 until her death end of August 2001.

Q. And why was your mother seeing the defendant?
A. She had been diagnosed with late stage ovarian cancer.
Q. Are you aware of the medicines that the defendant gave to your mother?
A. Well, I was there most of the chemos as well and just from seeing records and seeing what was on the little bags of stuff, I know that Taxol was one of the things. And she did eventually was supposed to be getting Procrit because she did have ups and downs. That's how I remember it that she did have times where her hair came back, but then she had times where she didn't want to get out of bed.
Q. You mentioned that you were there for most of the treatments. Can you explain how it was that if you lived in Virginia you were there for those treatment.
A. I drove in. Being self-employed, I could take the time off. I am married fortunately to a man who makes enough income without mine to handle our household expenses, so I could take four or five days and drive in -- it is six hours from Lexington to Crossville -- and be there to help mom and my dad who was pretty dependent on my mom.
Q. And were you able to observe how your mother responded to her chemo treatments in terms of any side effects she suffered?
A. Yes, I was. It did vary, and in my recollection at first she did get the full impact of what I understood chemo

would be, the hair loss and the weakness and tiredness. But then there was occasionally times where she felt great. She would be up and around. I'd still be there because I didn't want her to have to do the laundry and all of that sort of thing, but she still didn't want to see people very often because of the hair loss thing. But she would be up and around and being as big a part of the family as she always was.

Q. Okay. And what did you think at the time about how your mother was doing?

A. I don't think I thought that it was because she was getting better. I just I didn't know if it was if there was reduced amounts, and I didn't know the reason for it maybe. I don't believe it was explained to her, but maybe I thought Dr. Moon had reduced for her benefit if she couldn't take it any more. But I still it just seemed inconsistent to me.

Q. And at a certain point did you learn about this criminal case?

A. Yes, I did. My sister who was just up here, she lives here and apprised me of all of the news and that sort of thing . I am the farthest away so I am the least in contact.

Q. After you learned about the criminal case, how did you feel about your mother's treatment by Dr. Moon?

A. Well, it made me rethink things. I had thought when Mom was first diagnosed that chemo would only have been

recommended if it would do any good. She was very late stages. And my thoughts after the fact were that my mother would have had a much better quality of life had she not gone through any chemo, but then no one would have been profiting off of her for the chemo drugs. So I too am very angry.

Q. How has this experience affected you personally?

A. Besides being angry, it is very hard to trust professionals, especially medical people, when at some time earlier in my life I felt part of a doctor's treatment if you are ill requires faith and trust. It is the -- I am a faith based person. You need that. And the positive attitude to help yourself get better. And now I question everything. I am sorry. My father he when we discussed coming here today, he could not bring himself to do this. He beats himself up thinking he should have known what was going on. And he just it has weakened him. He is physically healthy. He is a healthy 77-year-old man. But he I don't know if it would be diagnosed as clinical depression. I am not a medical professional, but he there is a piece of him that's missing and hollow and in pain. Whenever I am here, I see it. When we talk on the phone, I hear it.

Q. Is there anything that you would like to tell the judge in this case?

A. I don't know if this case -- I hope that it has an impact beyond Dr. Moon. I would like for it to be well-known

and just to know for other cancer patients to know maybe they need to question rather than just be trustful and faithful. And if any other doctors are out there even considering doing something like this how hurtful and how permanent the damage can be. In this case I believe that the crimes here were out of financial greed and in my impression prison is one thing but a financial fine, a big penalty would be the most effective just because it was greed motivated and she needs to pay. And I think the money should go to a victims program or something. That's just my thought.

Q. Thank you very much, ma'am.

A. Thank you.

THE COURT: Ms. Thompson.

MS. THOMPSON: No questions, Your Honor.

THE COURT: Thank you, ma'am.

THE WITNESS: Thank you.

(Witness excused.)

MR. WILLIAMSON: Your Honor, the government calls Shirley Rogers.

SHIRLEY ROGERS

was called, and being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WILLIAMSON:

Q. Good afternoon, Ms. Rogers.

A. Hi.

Q. Where are you from?

A. New Bern, North Carolina.

Q. Ms. Rogers, what do you do for a living?

A. I am a social worker and chaplain at a 40-physician internal medicine practice with an oncology center in Pottsville, North Carolina. We have five clinics. I serve all five mostly as an advocate for indigent patients.

Q. How long have you worked there?

A. A year and a half.

Q. Where did you work before you went to the medical office?

A. I worked at I was the associate minister for 1200-member Presbyterian Church, New Bern, North Carolina. I am a ordained presbyterian minister.

Q. Ma'am, at some point did you come into contact with the defendant, Young Moon?

A. Yes, sir, I did.

Q. How did that happen that you came in contact?

A. My father was diagnosed with what the urologist termed garden variety prostate cancer in October of 2000 and had some surgery to reduce the size of his prostate. Then was

set up with radiation therapy to begin in January of 2001 after he recovered from his surgery.

In December, my mother called and said that my father was quite ill and I needed to come home. So I took a six-month leave of absence from my job to come home. I am the only child. My mother and I took care of my father.

In January -- in December, he began to have lots of clotting and lots of blood in his urine, and I was extremely concerned that this did not appear to be the norm for the people in the church that I had known who had gone through prostate cancer, and so I began to push his urologist as well as the staff at the hospital to do a chest x-ray because that had never been done and that is standard protocol in a hospital admission.

When he in fact received his chest x-ray, it was noticed that he had nodules on his lungs. They did a needle biopsy there at the hospital in Crossville which showed that he had nonsmall cell lung cancer, and his radiologic oncologist immediately referred us to Dr. Moon, who was his wife.

Q. That was Dr. Lewis?

A. Yes, sir.

Q. Ma'am, what was your father's name?

A. Alfred G. Smith.

Q. When was it that Dr. Lewis referred your father to Dr.

Moon?
A. In January of 2001.
Q. And what course of treatment did Dr. Moon put your father on?
A. She put him on a course of treatment of Taxol and Carboplatin and Procrit shots.
Q. Were you present in Crossville when your father was receiving his treatment?
A. Yes, sir.
Q. How would you say -- actually let me withdraw that for a second. Approximately how long was your father under the defendant's care?
A. From January of 2001 until May of 2001. He passed away on May 4th.
Q. Were you there in the course of witnessing his treatment? How would you say he responded to his treatment?
A. Miraculously well. My mother and I were extremely hopeful. My father was extremely hopeful. We typically packed a cooler to take with us on the trip from Bledsoe County to Dr. Moon's office. He ate all the way up there and drank water and juices all the way up there. He typically had a snack while he was there and then would send me out toward the end of his treatment to retrieve whatever he wanted for lunch on the way home, and that was generally either a pizza from Pizza Hut with a vanilla milk shake or a

bag of Krystal hamburgers and a vanilla milk shake.

Then we would eat dinner when we got home.

Q. How about with respect to any hair loss?

A. He had no hair loss. You need to understand that my father was very proud of his hair, and so he was terrified of losing his hair. He had no hair loss and in fact grew a very thick beautiful beard while he was on chemotherapy.

Q. Ma'am, in the course of your work at the church and then now at the medical office, can you frequently and do you frequently come into contact with patients that are undergoing chemotherapy?

A. Every day.

Q. More specifically, do you come in contact with patients receiving Taxol?

A. Every day.

Q. How would you compare your father's side effects --

MS. THOMPSON: Your Honor, I am going to object at this point. It is really sounding like medical testimony.

MR. WILLIAMSON: She is drawing no conclusions, Your Honor. She is simply comparing what she's seen in different patients receiving the same drugs.

THE COURT: As long as she doesn't express an opinion about medical causation, she can testify as to her observations.

Q. How would you compare the way your father responded to

Taxol to the way that other patients you have seen receiving Taxol responded?

A. Most of the patients that I see every day who are taking a course of Taxol and Carboplatin have lost their nails up to their nail beds. They have no hair on their body period. There are often violent reactions with nausea and vomiting and diarrhea as well as abdominal cramping with these drugs. My father experienced none of that.

Q. Ma'am, how has your father's death affected your family?

A. Well, I made a page of notes because I was afraid that at this point I would lose my composure. My mother and I have both been on medication for clinical depression. Since we found out that in fact there was an investigation regarding the treatment of these patients because if you have ever experienced the death of a loved one particularly from a damnable disease like cancer, it is hard enough to watch them die. You know, by the time my dad died, he was in so much pain that we couldn't change the sheets under him if he urinated on the sheets. It hurt him too bad to be moved. So we just let him stay there for the day that it took for him to die. So you need to understand that.

You also need to understand that to then begin to process that kind of death on top of the intentionality that was behind the thought processes that brings a physician to make a determination that the most vulnerable people in our

company aren't going to get appropriate treatment was devastating for me. I had spent my entire professional career either in social work or in ministry where I was called to make judgments every day about various kind of extremely difficult situations. I no longer trust my judgment. So I am no longer in the ministry, although I have continued with my ordination. I have not revoked my ordination. I work as an advocate for the working poor who come into our clinic seeking treatment and have no means to pay for it. I find a way for them to pay for their treatment. I question everything that I see going on there. I go to the board of directors if I see one misstep.

My daughters don't have a grandfather. We have two adopted children. The adoptions both took place after my father had died. We had hoped that at least we could buy him enough time with the chemo to see his eldest granddaughter who is now five years old. My mother had to sell her home because she is on a fixed income now of her Social Security which is a little over $900 a month. That doesn't go very far no matter where you live, so she lives with us now.

I have taken on supplemental jobs to supplement our income so that we can all live and buy groceries and have what we need and make a reasonable go at this. We buried three of our family members in six months from cancer, so I would hope that the people in this courtroom that can

understand the kind of anger and distrust and devastation that we feel when we begin to understand that this did not have to happen.

Q. Ma'am, before we finish, is there anything you would like to say to Judge Campbell with respect to the defendant's sentencing?

A. I would respectfully ask for maximum sentence. I work in around physicians every day who put their judgments on the line every day. I see people walk away who are cancer free. I see people die from treatments that have not worked. But when medicine is motivated by greed, then I think we're in a real serious state of affairs in this country. And I would ask particularly on behalf of the working poor who often don't get the best treatment anyway who rely on TennCare and Medicaid to pay their bills, I would ask on behalf of them that you deliver a maximum sentence for this very intentional process that has gone on that has cost the lives of people whom we love. I appreciate your listening.

THE COURT: Thank you, ma'am. Ms. Thompson.

MS. THOMPSON: No questions, Your Honor.

THE COURT: Thank you.

(Witness excused.)

MS. THOMPSON: Can we approach the bench again?

THE COURT: Yes.

(A bench conference was held as follows:)

MR. SIMMONS: Your Honor, I think it is inappropriate for the prosecution to solicit from these people what their opinion is as to appropriate sentence. We have made our objection to it. I think spontaneous when they ask them if there is anything they'd like to address the Court, you can note our objection, but I think it is inappropriate to ask that question.

THE COURT: I agree. He didn't ask that question. He asked is there anything else you want to say, and I think that is appropriate question under Victims Rights Act.

MR. SIMMONS: My understanding, notes reflect, Is there anything else you'd like to say with respect to sentencing?

MR. WILLIAMSON: That's what we're here for.

THE COURT: I don't think the question was inappropriate. I certainly don't want him to lead the witnesses as to specific conclusions.

MR. SIMMONS: If we could note our continuing objection.

THE COURT: It is noted. And I guess the best way I can say this is, you know, I am a big boy. I am grown up. I know how to apply the law and find the facts and know not to be unduly swayed by emotional testimony, and I am going to do what's appropriate.

MR. WILLIAMSON: I would -- we only have one more.

MS. THOMPSON: Just want to make sure wouldn't be cumulative.

MR. WILLIAMSON: Just one more.

MR. SIMMONS: Thank you.

THE COURT: You are welcome.

(Bench conference concluded.)

MR. WILLIAMSON: Your Honor, government calls Linda Simpson Statham.

LINDA STATHAM

was called, and being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WILLIAMSON:

Q. Good afternoon, Ms. Statham. Ma'am, where do you live?

A. I live in Alpharetta, Georgia, suburb of Atlanta.

Q. Ma'am, how did you first learn of the defendant, Dr. Moon?

A. My brother, Jack Byron Simpson, was a patient of Moon's. Jack was diagnosed with colon cancer in July of 2001. He immediately had surgery in Crossville, the Cumberland Medical center.

Dr. Ivey, his doctor who did the surgery, I met with right after the surgery, immediately after. And Dr. Ivey said, Well, Jack has a good prognosis. He said, The cancer has not gone to any other organs. I would suggest

though that he contact Moon for a treatment of the cancer.
Q. What in fact did your brother do?
A. Pardon me?
Q. What did he do in response to that advice?
A. Oh, yes, he did start chemotherapy with Moon. I refuse to call her a doctor. Moon.
Q. And when approximately did your brother begin treatment with the defendant?
A. August 2001.
Q. Ma'am, do you at your house in Alpharetta have your brother's medical records?
A. Yes, I do.
Q. In preparation for this case, did you review his medical records?
A. I have reviewed his medical records.
Q. And what was the primary chemotherapy drug that your brother received?
A. Jack received Camptosar. He received Leucovorin and Procrit.
Q. Did he also to your knowledge receive a drug called 5FU?
A. Yes, he did. Yes.
Q. In the course of your review of his records, is it accurate to state that there were two separate -- actually let me withdraw that for a second. How long approximately was your brother under the defendant's care?

A. Approximately eight months.
Q. During the course of his treatment with the defendant, is it fair it to say there were two separate occasions when he received his treatment of Camptosar, 5FU and Leucovorin for seven straight weeks without a break?
A. That's correct.
Q. Did you have occasion during your brother's treatment to observe the way he responded to these drugs?
A. Yes, I did. And if I wasn't here with Jack for or after the treatments, Jack and I talked on the phone. We were very close. We talked on the phone. I would be the one he would confide with the most. And he would after each treatment he would tell me how he felt.
Q. How would you characterize the way that your brother responded to the treatment?
A. Well, it was so surprising because Jack was a very slight person. I would like to show a picture of Jack. May I?
Q. You may.
A. This is my brother, Jack Simpson.
Q. Is that an accurate picture of your brother?
A. Yes. He was very small. He only weighed 135 pounds when he was well. And when he was taking the treatments, he didn't get very sick. He did not lose his hair. He was not very nauseous. I mean some, but not like I had been around

other patients. My husband's mother had suffered from cancer, and I had been with her. I knew how patients generally react to treatment. Jack wasn't very nauseous, and I remember thinking, my, this Moon lady must be doing a good job that Jack is not getting very sick from his treatments, so at the time I was so pleased. It never, ever entered my mind that he might not be getting his full treatment. I feel very guilty that I didn't question that.

Q. Ma'am, you mentioned that your brother left the defendant's treatment after a matter of months. Why was it that he left her treatment?

A. Jack expressed to me several times that he was having difficulty communicating with Moon not because of a language barrier but because he when he would have concerns -- and let me say that Jack was not one who would ask for extra attention or demand a lot of extra attention. But he naturally had some concerns, and in particular I remember he got a report back that the cancer had spread, that it was in his liver and the cells had gotten larger. He was very upset about that. And he called Moon. Jack told me that Moon said, Well, we -- come back. Come back in two weeks, and we'll talk about it.

Q. And is that approximately at that point that he left her care and chose another oncologist?

A. It was shortly thereafter I believe, yes.

Q. Ma'am, what effect has your brother's death had on your family?
A. Oh, my goodness, tremendous effect. Jack was not married so of course had no children. He was very close to my children. Uncle Jack. Jack was a very kind man. He was generous. He didn't have much money, but he was very generous. At the time, our mother was in a nursing home in Crossville. Jack went every single day and visited our mother. Jack had a very winsome way about him. He was, as I said, he was small. He just kind of hopped when he walked. He was a very happy person. He had a wonderful will to live. Every day he'd pick up my mother's laundry, take it home, wash it, bring it back. The nursing home always had beauty contests or just different contests. Jack made sure that our mother had a new dress for every contest. Every holiday, Easter, didn't matter what it was, Mom had a corsage that Jack brought for her. He was just a wonderful son. And he is a great loss. He made everybody in that nursing home happy, not just my mother. Everybody knew Jack because he was such a joy to be around, so not having Jack in our family is a tremendous loss to us. He was a very loved person.
Q. Is there anything about the specific circumstances of your brother's death and his having been in the defendant's care that has altered the way you and your family have dealt with his loss?

A. Well, of course when you find out that very possibly treatment was diluted, that he didn't receive the correct dosage of treatment and that he more than likely died from that lack of the proper care, it causes one to question. Anger, yes. I would say disappointment is very heavy in my heart. I already mentioned I have a lot of guilt that I question why wasn't any of this caught, so. . .

Q. Before we finish here, again would you like to to address the Court with respect to the hearing today?

A. Yes, I would. Thank you, Judge Campbell, first of all for listening to all of the testimony during all the trial. I want to thank the TBI individuals, all of the federal individuals who worked on this case. I thank you so much for bringing this forth and bringing this to the public's eye because it should not go on. You know, our loss of Jack is one thing, but if this type of thing continues, the hundreds of families that might be affected, it would be devastating.

Do you mind if I just read one little paragraph that I wrote concerning this loss? I said, When one loses a family member or a friend through a natural death or even a dreaded accident, it is always difficult to accept. Even though those of us who are Christians know we will see that person again, and thank goodness for that. However, to lose someone dear through the purposeful intentions such as were demonstrated by Moon makes it much more difficult to accept.

Jack died, I feel, because he was murdered. It is a terrible thing. It is a terrible thing to even accuse somebody of that. I feel strongly about that. He wasn't shot. He wasn't stabbed. He was denied the opportunity to live a full life due to Moon's greedy ways. If a doctor makes an honest mistake and mistreats a patient, that's one thing. I can understand that, an honest mistake, but to purposely, purposely deny somebody the treatment that that person deserves is unacceptable. It never should have happened.

I would ask that you consider Jack and all of the other patients and their families who were so affected by this selfish, greedy person. She is a disgrace to the medical profession. She is a disgrace to humanity. She deserves the same mercy that she gave the people she gave treatment to.

Jack and others did not deserve to die. My brother, Jack, had the most wonderful outlook. Anybody who knew Jack always commented on the fact that Jack had this huge will to live, and he did. I am going to fight this. I am going to beat this. Don't you worry. No, Linda.

And he did. He thought that he did. And I thought he would make it too. And I think -- I know with the right treatment he would have made it. And I think that my message would be he didn't deserve this. He was kind. He was a wonderful man. He never, ever that I know of ever hurt

anybody.

He was 54 when he died. That's not very old. He didn't deserve to die. And I would ask, please, Judge Campbell, think about all of these people. Think about Jack. I brought this picture in particular because Jack told our neighbor that this was always his favorite picture, and I appreciated that because I was very close to my brother.

Q. Thank you, ma'am.

A. Thank you.

THE COURT: Ms. Thompson, any questions?

MS. THOMPSON: No, Your Honor.

THE COURT: Thank you, ma'am. Appreciate you coming.

(Witness excused.)

THE COURT: Mr. Williamson, any further proof on behalf of the government?

MR. WILLIAMSON: That's all the proof from the government.

THE COURT: Ms. Thompson, would you like to introduce any proof?

MS. THOMPSON: Yes, Your Honor I'd like to recall the woman from the TBI.

THE COURT: All right. I guess that's Ms. Matheny.

SHARON MATHENY

was recalled, and having been previously sworn and remaining under oath, was examined and testified as follows:

THE COURT: You can be seated in the witness chair. You are still under oath.

DIRECT EXAMINATION

BY MS. THOMPSON:

Q. I am not a math person, but I wanted to ask you about these numbers. You said that it did not matter what the individual dose was charged as to what the total loss would have been; is that correct? Was that your testimony?

A. Which exhibit? And may I have it back before me?

Q. Yes. I am looking at Exhibit 1.

A. Would you reask the question.

Q. What you said was let's take first the line here, the Medicare line was $1,148,262.02. That's multiplied by a fraud rate of 48.939; is that correct?

A. Yes.

Q. Okay. But if the amount that you paid per dose or the amount that you billed per dose changed over time and the fraud rate is not consistent, then the amount of loss could be manipulated?

A. The fraud rate is determined at the end of the indictment period using the total of each individual billing per patient, so a patient may have had 50 bills , a hundred

bills. They are billed at whatever she billed at that time. I am not -- I have no way of determining how she, Dr. Moon, determined what to bill. All I know is I have a schedule of billing individual bills per patient that is what this spreadsheet summary is based on.

Q. Okay. Let me give you an example. Work with me on this if you would, please, and help me understand if the loss can be manipulated. Let's say in one year you bill for five doses of medication. You actually gave five doses of medication. And that medication costs one dollar per dose. That would be a total amount billed of five dollars. Five billed, one dollar per dose total amount billed at five dollars.

If the next year the price increases substantially, billed for five doses, it was a hundred dollars per dose, you gave zero doses, you would have billed for five hundred dollars. Five doses times a hundred dollars equals five hundred dollars. Total if you summed that up you would have billed for ten doses. It would be a 50 percent fraud because the first year you got your five doses, the second year you got zero doses, so you only gave five doses out of ten billed. That's 50 percent fraud, and the total cost would be $505 that you billed for.

If you multiply $505 by 50 percent, you would get a total fraud rate of $252.50.

A. I have no idea. I don't have a calculator up here or a piece of paper to do it with.
Q. Can we get you a piece of paper, or can I get you a calculator?
A. Both would be nice.
Q. So my problem that I --
A. Hold on one second. I am setting up a spreadsheet. So you said year one you had five doses at a dollar a dose, total billing five dollars.
Q. And you --
A. That was actually given to the patient?
Q. Yes.
A. Year two you have five doses at a hundred dollars per dose. None of that was given.
Q. Right.
A. In my calculations if you have that then your fraud rate would be 99.1 percent based on total bills.
Q. Based on total bills. How do you get 99.1 percent?
A. You said you had five doses at one dollar a dose. Do you want me to write it up here?
Q. Sure.
A. May I step down?
THE COURT: Yes, ma'am. Just be careful.
THE WITNESS: So year one you had five doses at a dollar a dose. That is the total of $5. And then year two

you had five doses at a hundred dollars a dose. That's $500. So your total for both years is $505.

Your $5 from year one is okay, but your $500 from year two is fraud. So then you divide your total fraud which is $500 times your total billed, which is $505, so your fraud rate would be .990099 which is 99.1 percent.

BY MS. THOMPSON:

Q. Okay. So that is not how you did the problem though in the case?

A. Because it is a different scenario.

Q. Right.

A. The way I did this problem is I took a fraud percentage rate from the trial.

Q. So what's the fraud percentage rate? Let's say you didn't -- the fraud percentage rate could be manipulated here?

A. No.

Q. You could say it is a 50 percent fraud?

A. No, ma'am, it is a hundred -- it is a 99.1 percent fraud because you are not doing it on doses. It is not based on doses. If so, then this would be this first column would be number of doses during indictment period.

Q. Right.

A. And it is not that. It is the total amount billed so it is a different whole different. It is apples and oranges.

Q. So how do you get the fraud? You said that came from the trial. I want to know where that number 48 percent came from.
A. Hold on. Let me get my stuff out.
THE WITNESS: May I step up also.
THE COURT: Yes, ma'am. Just be careful stepping up, ma'am.
THE WITNESS: Yes, sir.
Bob Turner prepared a schedule or what I would call a spreadsheet for the trial for Taxol, Onxol for the indictment period.
BY MS. THOMPSON:
Q. Yes.
A. It is Exhibit 1.3, U.S. 5950. And he also prepared the Exhibit 1.0.
If you take and we want -- excuse me, during the trial it was brought out that we wanted to show the -- give her the benefit for the overfill in the vials so we calculated the fraud percentage rate taking into consideration the overfill. So the total drugs purchased for Onxol -- I am sorry, this is a little bit unwieldy. Okay.
The drugs purchased, including the overfill, was obtained off of U.S. 5978.
THE WITNESS: May I use your --
THE COURT: Go right ahead.

THE WITNESS: And that is Exhibit 1.6 on the Taxol. It is the invoice purchases overfill table.

So we had all of her invoices, all of Dr. Moon's invoices from her office, and then we also in trial it was brought out that we double checked that with the invoices from the individual drug companies. And the total amount including the overfill was determined to be 54,217 in milligrams. And the drugs administered which is off of Exhibit 1.3 dosage charted for the indictment period, the total dosage amount charted was 106,181,000. I do not remember if this is in millions or thousands, but anyway, one way or the other. When you take the difference between the total amount purchased plus the total amount of drugs purportedly administered, the difference is 51,964.

When you take the difference and divide it by the total administered, you get a fraud percentage rate of 48.939 percent.

BY MS. THOMPSON:

Q. Okay. So what you are saying instead of worrying about milligrams or whatever, we're just saying units, okay. So what you did was over the whole all of the years involved --

A. Indictment period.

Q. Indictment period you did a summary, okay. And from that summary, you say your top number is going to be the amount that she bought?

A. Total amount purchased, yes.
Q. Total amount purchased from the drug companies, and that's the 106 number?
A. No, total purchases 54,217.
Q. Fifty-four. And the total amount that she billed for over all of the time periods is that 106,181?
A. It is the total dosage amount charted on Bob Turner's schedule.
Q. So you took the amount that she actually purchased, you put it over the amount that she billed for, and you got a percentage, a fraud percentage, right?
A. No, I took the total amount purchased, subtracted -- well, the total drugs administered, subtracted from what she purchased. This is the amount that was said to be administered that was not in the inventory.
Q. Okay.
A. That is the difference. And I put that over the total administered to get -- Bob Turner put it over, and I verified it. That's all I did was verify.
Q. Taking the same scenario, let's go back to my scenario that we just did where we come up with what my fraud is. If we are -- if according to my scenario I gave you before the total amount purchased is -- let me just review for the record. I said that the first year I billed for five, I actually administered five, and the price was a dollar unit.

The second year I billed for five, I administered zero, and the price was a hundred dollars per unit. So my total then would be I billed for ten, I actually purchased and administered five.
A. That's not comparable to that.
Q. It is.
A. No, ma'am, it is not.
Q. Why?
A. Because billed and administered is different than purchased and administered.
Q. Then let me change my scenario. Let me say I purchased and administered. The first year I purchased and administered five. The second year I purchased and administered zero but billed for five. So I have a total of billed for ten but in actual purchase and administered of only five.
A. That's not comparable to this because the 48.939 percent was determined during trial based on the total amount purchased for the period. Hold on. Excuse me, I made a mistake. The percentage rate was based on --
Q. It is that formula you just wrote up there.
A. I know, please. I just need a second. We're changing between apples and oranges, and I have got to get it straight before I make a statement.
Okay. Purchased you are saying you administered

five.
Q. I am saying I administered five.
A. You say you purchased and administered five on year one?
Q. Right. I purchased and --
A. And administered five doses on year one. You purchased and administered zero doses on year two. You billed for ten doses.
Q. Yes. But I want you to use the totals. I don't want you to use year by year. I want you to use the totals.
A. So your percentage rate based on purchases and administered dosage, not bills doses, total doses.
Q. For the year I mean for the two years, I want you to come up with a two-year summary.
A. For doses or bills?
Q. I want you to do it just like you did up here. That top number, you said that's the purchase and administered. Explain to me --
A. No, I said that was drugs purportedly administered from her chart.
Q. Okay.
A. I don't know what was actually administered because I wasn't there. That's drugs purportedly administered from her chart.
Q. Okay.

A. And that was determined in trial.
Q. Then let me set up my scenario. Let's say there's been a trial. At trial I was found guilty of purportedly administering in the first year five doses, and I actually purchased five doses. The second year I purportedly administered five doses. I purchased zero doses. What is my fraud percentage rate for two years total?
A. Okay. Fifty percent.
Q. Fifty percent. Okay.
A. Based on doses.
Q. Based on doses. If I take that 50 percent right like you did here, I multiply that by the total amount of money I received.
A. That was what was done in trial based on the money that was --
Q. Okay. So if I received a total amount of money of $505 --
A. That's what you actually were paid.
Q. Right.
A. $505.
Q. I was actually paid $505 total.
A. Okay.
Q. How much of that is loss? How much of that is fraud?
A. $252.50.
Q. Okay. But we know in actuality that first year the

doses I bought and actually gave I only paid a dollar each for them, and so I only paid five dollars.
A. I didn't do calculation.
Q. This is part of the scenario.
A. I verified his spreadsheet figures.
Q. I am asking you as part of the scenario, please work with me, if the first year I billed for five doses, I actually administered five doses and they were a dollar a dose, total amount then is five dollars. And that five dollars was actually given to the patient. If the second year was when all my fraud was committed, if all fraud occurred in the second year when the price went way up to a hundred dollars per dose, $500 of that total amount is fraud; is that correct?
A. Yes.
Q. So it is very important how much you paid per dose and when it was purchased.
A. I have no idea.
Q. In my scenario I listed, you said it was $252.50 of fraud, but that's an estimation and that's not an exact amount.
A. You would have to -- to get an exact amount, you'd have to be in the office, know what was exactly given, know what was exactly purchased, know what was exactly paid at what date, which patient, which billing. And you would have to

determine individual line items how much fraud. If you knew, if you were a mind reader and you knew how much was actually given to that one patient on January 1st of 2000, what was actually paid to her on for that billing, what she billed, what she was paid, you'd have to do it for each patient for each individual day to get an actual fraud loss. And you would have to be in the office and know what was actually given and what was actually purchased, and I don't know that because I wasn't in the office. All I did in this case was take Bob Turner's spreadsheets, verify his figures using the spreadsheets that were already opined upon in the court case and determined to be correct and determined to be accurate and brought those figures forward to determine that his summary sheets are correct, and that is my opinion. They are correct.

Q. I can manipulate these numbers in another way. If I say in the first year I billed for five doses, I got zero doses, a dollar a dose, that's five dollars worth of fraud.

A. What do you mean you got zero doses?

Q. Administered. In actuality gave patients zero doses. If in the first year I billed for five doses.

A. You can do anything with these two years, but --

Q. But I could make the fraud be either five dollars worth of fraud or $500 worth of fraud, depending on how I manipulate these numbers?

A. In this instance, yes, but when we determined that a percentage is accurate from the trial, we know that the fraud rate determined by the trial is 48.939 percent, I can legitimately take that forward or Bob Turner can. He did the spreadsheets.
Q. But that's an average?
A. And I can determine.
Q. Would you agree with me?
A. It is a percentage.
Q. It is a percentage and an average; it is not an actual loss?
A. It is not an average. Nobody knows what the actual loss is. I don't know because I wasn't at the office.
Q. Would you agree with me that depending on what you are reimbursed and what you bill for Medicaid, TennCare and Blue Cross Blue Shield that the numbers would change also? I mean I could manipulate this loss formula here by changing the different percentage rates depending on what --
A. No.
Q. Are you saying no?
A. I am saying no, because I am saying --
Q. Should we go through this?
A. Hold on. Let me finish my statement if I can. What I say no to is if you determine -- if you change Exhibit 1, page one, from this that I have in front of me, if you change

Medicare to two million something and apply our fraud percentage to it, yes, you are going to get a larger amount of intended loss. Yes. That I will agree to.

But I will not agree that the fraud percentage is not correct because based on the spreadsheets from the trial, that is a correct figure determined by the difference from what she purportedly administered and what we know she actually purchased from the drug companies from their records and her records also.

Q. You cannot use fraud percentage to determine the actual loss?

A. We're not determining the actual loss here. We're determining the intended fraud loss based on what the actual fraud percent was.

Q. You can't determine the intended loss?

A. Excuse me, may I --

MR. WILLIAMSON: Could she let the witness finish her sentence?

THE COURT: You can finish your statement.

THE WITNESS: May I start over?

THE COURT: Yes.

THE WITNESS: This is not trying to determine the actual fraud loss because I can't determine that because I wasn't in that office giving the medication, so I don't know what was actually given to who. The drugs that were

purportedly given that she charted, Dr. Moon charted, less the drugs that were purchased from the drug company which we got her invoices -- excuse me, Bob Turner got her invoices and Andy Corbitt. Plus they also obtained the same invoices from the individual drug companies. That is how he determined the percentage rate.

This has nothing to do with actual fraud. This is, as the summary shows, it is intended fraud. It is purported -- it is taking the fraud percentage that was determined in the trial, multiplying it by what was actually the total that was actually billed from what we have from the companies, and that is the amount of the intended fraud loss. This is not coming up with an actual fraud loss because I can't determine that. I wasn't there.

MS. THOMPSON: Your Honor, may I have a minute?

THE COURT: Yes.

BY MS. THOMPSON:

Q. Let me ask you another question. Do you know anything at all about insurance and the fact that doctors have a certain amount of write-offs that they get when they have contracts with insurance companies?

A. Are you when you say write-offs, are you saying now I am speaking from my private insurance with Blue Cross Blue Shield, I know that when my doctor in Murfreesboro bills Blue Cross Blue Shield for an $80 doctor visit, he has I guess

negotiated a contract that he says he will accept $20, and so he has an adjustment of some kind that shows on my EOB, my Explanation of Benefits. It will show $80 visit with the doctor. It will show an adjustment. It says adjustment and then a --

Q. Network savings?

A. Of $60. And then it will show the doctor's visit is $20 and that's what he has accepted for this visit of let's say a 99201, which is a short visit. And then my insurance company pays 80 percent, which is $16, and then four dollars I will send them. That's all I know because I don't work for an insurance company. I work for Tennessee Bureau of Investigation. I have never worked for one, and that's not a part of my job. I am an auditor, not an insurance agent.

Q. So you didn't take into account here any information about what would have been the -- you just took the original billed amount, correct?

A. Bob Turner prepared these, so he took the original billed amount.

Q. You didn't know what the discount would have been as --

A. Then he took the next column over is the dollars paid, and, no, I don't -- I have no idea if he knows, but the spreadsheet doesn't take the adjustments because that wouldn't really affect the computations because -- I am sorry.

MS. THOMPSON: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. WILLIAMSON:

Q. Ms. Matheny, how are you?

A. Just fine, thank you.

Q. The calculations Special Agent Turner did was you looked at how much Dr. Moon had purchased of these drugs and how much she claimed she had given patients of these drugs, right?

A. Yes, sir.

Q. And then he divided, used those numbers to figure out exactly how what percentage of those drugs that she claimed she had given she had actually given, right?

A. Yes, sir.

Q. And then he multiplied that number by the amount that she asked insurance companies, including Medicare and TennCare, to reimburse her for the drugs that she claimed she had given to patients but hadn't actually given patients, right?

A. The total amount billed, yes, sir.

Q. Total amount billed over this two-and-a-half-year period for Taxol and Camptosar, correct?

A. Yes, sir.

Q. Do you have in front of you there how much the reimbursements decreased over that period?

A. No, sir.
Q. Ms. Thompson's example she increased the payment schedule one hundred times over one-year period. Have you ever encountered an increased payment of a hundred times over a period?
A. No. I was looking at this previously, and I had said, you know, the one patient was billed at $2400 for six units, and then they got seven units for $2800 so, no, I don't see any hundred percent variation.
Q. Sometimes there are small increases year to year in how much insurance companies pay for certain services, right, small increases?
A. I am sure there are, yes. From the looks of this schedule, yes.
Q. Okay. Now, the total loss number or total intended loss number that Special Agent Turner calculated and you verified is 1.295 million dollars, right?
A. Hold on. Let me look. I am sorry. It is $1,295,653 of intended fraud loss.
Q. Okay. Assume for a moment that an important figure in calculating the defendant's sentence is whether the loss was more than one million dollars or the intended loss was more than one million dollars. Is there any reason you can think of --
MS. THOMPSON: Your Honor, I am not sure what kind

of opinion she is going to be qualified to give on this matter. She's already said that she didn't know what the amounts were.

THE COURT: Ask your question, and then we'll argue about it.

BY MR. WILLIAMSON:

Q. Is there any reason you can think of, Ms. Matheny, why that 1.295 million dollar loss number would be off by 30 percent such that the actual intended loss would be under one million dollars?

MS. THOMPSON: Your Honor, I object.

THE COURT: Overruled. Go ahead.

THE WITNESS: May I do something on a calculator?

BY MR. WILLIAMSON:

Q. Have at it.

A. No.

Q. Okay.

MR. WILLIAMSON: Thank you, Your Honor.

THE COURT: Anything else from this witness?

MS. THOMPSON: No, Your Honor.

THE COURT: Thank you, ma'am.

(Witness excused.)

THE COURT: Ms. Thompson, would you like to call another witness?

MS. THOMPSON: No other witnesses, Your Honor. Thank you.

THE COURT: All right. Does the government want to summarize its position about the objections? I need to rule on those and then set the advisory guideline range.

MS. McINTYRE: Yes, please. Thank you, sir. Of course the base offense level in this case is six under 2B1.1. The first enhancement is for a loss over one million dollars, which adds 16 points pursuant to 2B1.1(b)(1)(i). We think that the evidence from Ms. Matheny and the exhibits introduced in this case clearly show that there is an intended loss of over one million dollars. And in this case the billed amount is synonymous with intended loss; hence, that is the figure that counts for that enhancement.

Next, the next enhancement is that the offense involved ten or more victims pursuant to 2B1.1(b)(2)(A). That adds two points. The definition of victims for purposes of that particular enhancement includes people who either had actual bodily injury or had economic injury. In this case, the United States is contending that people who had, or, excuse me, the entities which had economic injury, economic loss are the ten or more victims under that particular section.

And again Ms. Matheny testified and the exhibits verified that there were 15 private other insurance company

victims. And of course we also know from the trial that there was Medicare, TennCare and private Blue Cross Blue Shield. That means that there were 18 different entities that suffered from economic loss, and that enhancement should apply.

The next enhancement is for sophisticated means under 2B1.1(b)(9)(C), and that adds two points. The reason why this applies is because the defendant used her skills as a doctor to convince her nurses to carry out her instructions for Procrit and also to allow her to mix chemotherapy herself in order to hide her diluting of those chemotherapy drugs. That is a very sophisticated method of carrying out the healthcare fraud scheme, and that was why that enhancement should apply.

The next enhancement is for the risk of death or serious bodily injury under 2B1.1(b)(12)(A), and that adds two points. The testimony of Dr. Rothenberg clearly showed that there is a risk of death when you give cancer patients less medicine than either your treatment plan calls for or you have told the patient that they are going to be getting. Moreover, we would simply add that under any common sense analysis, whether we have an expert testifying about it or not, that when one gives a cancer patient less chemotherapy drugs, which is of course a life-preserving treatment, then there is necessarily a conscious and reckless risk of

injuring that person. That is a very serious thing, and that is exactly what this particular enhancement should be applied to.

Next, the defendant should get the enhancement for having known that a victim was a vulnerable victim. That's under 3A1.1(b)(1), and that adds two points. There has been a lot of talk by the defense counsel about what victims are, and of course victim has a different definition for each of these enhancements. For this particular enhancement, the definition of a victim is one who is unusually vulnerable due to age, mental or physical condition. And of course I think there could be hardly any clearer example of vulnerable victim than someone who was a cancer patient and is showing up for life-saving treatment from her doctor. That kind of patient is clearly incredibly vulnerable in every sense of the word. She certainly here she certainly would be physically vulnerable, and of course many of these patients were elderly as well, making them vulnerable due to their age.

The next enhancement is that there is a large number of vulnerable victims under 3A 1.1(b)(2).

Now, we also presented evidence through Ms. Matheny about the number of vulnerable victims in this case. We recognize that it is impossible for us to say exactly who got how much Taxol or Camptosar aside from the specific

evidence presented through Dr. Rothenberg and the testimony regarding Sheila Taylor and Billy Jones because there was specific testimony at trial about those folks. But it is clear through the aggregate testimony shown at trial and through the jury's verdict that the defendant only gave about half as much Taxol as she billed for and only about two-thirds as much Camptosar as she billed for. It is a fair inference to look at the field of Taxol and Camptosar patients as a whole and to say that they are all victims of the defendant's conduct because there is no way for them to individually know who got what. And, therefore, having seen both the letters and the testimony that you have seen from patients and their family members, these people necessarily never will know for a fact how much of that medicine they got, and they will always feel approximate injury from the defendant's conduct, an uncertainty.

Now, in order to get a more precise calculation in the event the Court wishes to consider that the United States still applied what we thought was the most -- was a rubric that gave the defendant the highest possible benefit of the doubt in the event that the Court doesn't wish to consider every single Taxol and Camptosar patient a victim. Now, that is the testimony that you heard from Ms. Matheny. Even if you give the defendant the benefit of the doubt and assume that the patients who Dr. Rothenberg thought got partial

doses actually got zilch, got no doses whatsoever of those chemotherapy drugs and you assume the same thing about Sheila Taylor and Billy Jones and then you look at the people who got the highest doses and assume that they got none, then you still end up with 75 victims in this case. That would of course include based on the trial testimony that Procrit patient always got partial doses, evidence that the Procrit patients were all victims, and of course there were 69 of those.

Ms. Matheny meticulously went through and established that we did not double count Procrit, Taxol or Camptosar patients in any of that compilation in which we come up with 75 victims. I think the law is clear that 75 victims constitutes a large number of vulnerable victims. And that enhancement should certainly apply.

Next, we would note that the abuse of position of trust or special skill enhancement also applies. And that is under 3D1.3, and she receives two additional points for that.

In this case, the defendant had a special trust, a special skill and also a position of trust in that she was a doctor. She also had managerial discretion because she operated a solo practice in which she was not questioned really in essence by her employees. She abused both her position of trust, her special skill -- I guess it was three things -- and her managerial discretion by using them to

commit healthcare fraud and to further perpetrate her scheme.

Finally, the last enhancement is for obstruction of justice under 3C.1. Now, that enhancement applies because for two years. The defendant committed perjury at trial. She did this in three ways. She stated, and we can produce the transcript if there is any uncertainty about this, but she testified when she took the stand that she never intentionally billed chemotherapy drugs in amounts not administered to patients.

Furthermore, she said that she never told a nurse to chart ahead the amounts of medicines that were administered before those amounts were actually given.

And then finally under this prong she said that on January 9th of 2002 when the agent came and interviewed her that she truthfully answered their questions. Now, there was ample evidence at the trial showing that all three of those points were false, and of course they were materially false. They were all significant points about the fraud that she lied about.

The second way in which she committed obstruction of justice is by giving the material false statements and to the law enforcement agents during that interview as reflected in her conviction for Section 1001.

We would only note in addition to that computation, which adds up to 36 leaving her with a range of

188 to 235 months, that there was an issue about whether a fine should apply in this case. The United States certainly believes that a fine within the guideline range is appropriate here. Not only has there been testimony about the defendant's greed, but in the probation report I think it is quite clear that the defendant has ample resources to pay a fine and that in this case there is absolutely no reason to depart from that guidelines recommendation by not giving her a fine.

We thank you for considering these points.

THE COURT: Ms. Thompson.

MS. THOMPSON: Your Honor, I would first address the amount of loss. I am going to go by my presentence report here.

THE COURT: Okay.

MS. THOMPSON: I would first address the fact that the victim impact I still would argue that there are only three victims in this case and that there were three healthcare providers that were listed on the indictment. And I do object to any other people being listed as victims. I think in this matter these things happened from up until January of 2002, and at that time, Your Honor, the law was still that was in effect was Apprendi, and I would state as being preBooker. We could when this happened if there is an ex post facto argument in this matter that the sentencing

cannot be now changed or altered by Booker in allowing enhancements that are not specific to the indictment, and so I would argue that in this case there are only three healthcare providers. There are only three victims and that the other healthcare providers, these 15 others that they listed that were not in the indictment cannot be used for enhancement purposes, and I would certainly say that there's not been proof to those. I would also say that in this matter I mean we've heard some very emotional testimony. I can certainly understand people being emotional. I myself lost my mother to cancer. But none of these people provided any information that the loved ones that they lost were in fact due to any type of dosage or medication that Dr. Moon did or did not give to them. Certainly the woman with the ovarian cancer had cancer third stage ovarian cancer. The other person had lung cancer. I think those are all very serious matters, so we haven't heard any specific information here today that would list them as a victim and that there is no evidence that they suffered any direct harm.

Furthermore, Your Honor, I would say that the doctor said yes, there are protocols that they use with their clinical trials but that there are deviations from those protocols. He was not able to say with any certainty or percentage that if you deviate so much this then causes the specific harm, so I would say that even the doctor's

testimony failed, fell far short of being able to show that these people had received any specific harm.

Next I would address under the loss amount, Your Honor, the government has failed to prove that the amount of loss is over a million dollars for item I. The government says that they can take these numbers and just multiply them by a percentage and just come out with the amount of loss. But it really does matter as to which people received a shortage how much they were billed because TennCare would be billed a different amount than Blue Cross Blue Shield, and it would depend on which person individually did or did not receive a dosage. The government just averaged it out, but because it has a specific effect on the sentence, I would argue, Your Honor, that the government can't just come up with an average loss like they did.

I think I was able to demonstrate clearly that if you manipulated the numbers, if you were charging for different amounts that it would change the outcome.

THE COURT: What amount do you contend is the amount of the intended loss?

MS. THOMPSON: Your Honor, I would contend that it is under a million dollars. I don't contend that it is any specific amount, but I'd say it cannot be proven that it is up to a million dollars, and I would certainly say, Your Honor, that if we took out the amount that they put in for

these 15 insurance companies that are not included, then you get your number down to a number that could be manipulated by different percentages by a cost of, you know, an increase in inflation. That number could be manipulated to above or below a million dollars, so I would say that that plus the additional thing that the government did not address is the fact that the amount of loss under the definition of the amount of loss in the comments, people are given credit for any type of fair market value under E, subsection E1. You get credit for fair market value of services rendered. And I would say that just because you bill for a million dollars worth of services that everybody understands that the way billing works is there is a certain percentage that is discounted through a contract that you have in order to for using in-network providers. And the government didn't even address that at all, that there is a certain amount here that may have been easily written off.

So just because a doctor sends in a bill for any kind of services on your EOB for the amount, that's not what the doctor would even expect to get back. And it is not the true amount that they are billing for because they already have a contract and they understand that when they bill for a hundred dollars, they may only get $40 recognizes the cost of service. And the government did not even address that, so I'd say that their number is just completely wrong.

Next on the obstruction of justice charge, Your Honor. We would state that the government had claimed that the conduct and her statements made to investigators impeded justice, but there are no charges of any fraud that occurred after January 9th, 2002, so what she did or did not say to investigators does not affect in any way the amount of fraud that was occurring or she was convicted of.

Next I would say that we object to the -- again we object to paragraph 33 to the characterizations of victims where they have listed more victims than the indictment.

The government points to the fact that the defendant used her skill as a doctor to manipulate the nurses. I would say, Your Honor, that is not any special skill. That if you use -- if the jury found that she had instructed nurses to change doses, that that's not a special skill. That's just -- so it wouldn't be something that -- I mean, that would be something anybody could do.

Again we say that there is no evidence that there is any risk of serious bodily injury under paragraph 35. And the doctor again was not able to say that what percentage of persons would be injured or not injured. These people were seriously ill to begin with.

That's -- I did have some other objections, Your Honor, to the voluntary surrender and special conditions, but I think the Court is going to take that up after it

determines --

THE COURT: Yes. Have you withdrawn the objection dealing with voluntary surrender?

MS. THOMPSON: No, we haven't. As of now, no, Your Honor, we have not withdrawn our objection to voluntary surrender.

THE COURT: Okay.

MS. THOMPSON: So I'd like to be heard on that in a minute.

THE COURT: All right.

MS. THOMPSON: Any objections I didn't specifically address, I stand on my brief.

THE COURT: I have reviewed it. It is at Docket Entry 269.

I am going to make the following rulings regarding the objections. I am going to start with the objections that deal specifically with the offense level computations. First one is the defendant's objection to the intended loss calculation. The Court overrules that objection, and I am crediting the testimony of Ms. Matheny and the Exhibit 1 that was introduced by the government and finding that the intended loss was in excess of a million dollars, specifically based on that exhibit $1,295,653.

On the objection -- let me back up. That's paragraph 32. We start with a base offense level at

paragraph 31 of six to which there is no objection.

Paragraph 32, there was an objection of the 16-level enhancement based on the intended loss, and I am overruling that objection for the reasons stated.

Then there is an objection to paragraph 33 dealing with ten or more victims. I am overruling that objection. There are three listed in the indictment. There were 15 additional private insurance company victims that are in the Exhibit 2 introduced here at sentencing. And then there are the patient victims which are approximately 75 individuals, and that totals more than ten. But the defendant's objection in that regard is preserved.

There is also an objection to paragraph 34 dealing with sophisticated means. I think that that also should be overruled. The defendant used her skill as a physician to manipulate the medicine administered and also how things were charted. I think that's a sophisticated skill.

There is an objection to paragraph 35 regarding reckless risk of death or serious bodily injury, and I am overruling that objection. I am crediting testimony of Dr. Rothenberg on that issue.

Both parties have objected to paragraph 36 related to vulnerable victim enhancements. The defendant believes no enhancement should apply, and the government believes four levels should apply because of a large number of vulnerable

victims. And I have already stated my reasons thinking there were at least 75 patient victims, and in the opinion of the Court, that's a large number, and so a four-level enhancement would apply under 3A1.1(b)(2).

Paragraph 37 is objected to regarding abuse of trust, position of trust and special skill. I have already described the special skill, and an oncologist certainly holds a position of trust. I think that enhancement applies, and the objection is overruled.

On the obstruction of justice objection, I am overruling that in part and granting it in part. I believe that it is appropriate based on the conviction for Count Four of false statement under 18 U.S.C. Section 1001, and two-level enhancement applies. I am granting the objection to the extent that it is based on perjury at trial. In the opinion of the Court, the fact that the jury credited witnesses rather than Dr. Moon's testimony doesn't alone amount to perjury, and that type of enhancement borders on punishing a criminal defendant for exercising the right to testify. So I am not applying that enhancement based on perjury, but I am applying that enhancement based on the false statements to the investigators on January 9th, 2002, regarding what medications were being administered and related bills.

So the presentence report calculates an offense

level of 34. Based on these rulings, the offense level would be 36. The defendant has no criminal history, has no prior convictions, so she is in Criminal History Category I.

The advisory guideline calculations then would be as follows. First of all, it needs to be noted that the statutory maximum sentence on any one count is ten years so on Counts One, Two and Three there is a statutory maximum sentence of ten years. And on Count Four, it is five years.

Based on an offense level of 36 and a Criminal History Category I, the revised guideline range would be 188 to 235 rather than 151 to 188 that's in the presentence report.

The supervised release range would still be two to three years. Probation is not permissible under the advisory guideline ranges. Of course the guidelines are advisory.

The fine range would increase. Under 5E at offense level 36, it is $20,000 to $200,000. There is a hundred dollars per count special assessment for each count of conviction, so that's a total of $400 that's mandatory; the Court has no discretion. And the Court finds that the restitution amount is $432,238.

So there also is an objection to the characterization of the offense conduct that starts at page five of the report. The objection essentially is that Dr. Moon is contesting her conviction and intends to appeal and

doesn't concede the facts of the offense conduct. I am granting that request to the extent that it is simply noted for the record that she contests her conviction and is appealing.

There is an objection to the victim impact issue, and I have already ruled on that.

There was an objection to the obstruction of justice section of the report, and I have ruled on that as it relates to the enhancement.

There is an objection dealing with the recommended special condition of a ban on working in the healthcare industry if what is being recommended is a lifetime ban since that's not the recommendation. The recommendation is the prohibition on working in the healthcare industry during the term of supervised release, then that objection really is moot, and that's denied as moot.

There is an objection to what's characterized as net monthly cash flow, and essentially there is an objection to the recommended condition that a lump sum payment of $271,000 be paid within 60 days of sentencing. I am granting that recommendation to the limited extent. I think that that lump sum payment needs to be made and shall be made when the Crossville residence is sold because that's really what is the heart of where that money would be coming from. And I will spell that out in more detail shortly.

And counsel wanted to be heard on the voluntary surrender issue. But back on the cash flow issue, I am granting that objection to the extent that it would require $271,000 be paid within 60 days.

I think that takes care of all of the objections other than the voluntary surrender issue that counsel wanted to be heard on further. Ms. Thompson, Dr. Moon has a right to speak directly to the Court should she so choose. If she does not want to do so, that's also her right.

MS. THOMPSON: Yes, Your Honor, she would like to address the Court.

THE COURT: All right. Dr. Moon, if you'd come up to the podium please, ma'am.

You can stand there at the podium if you'd like. You don't need to be under oath.

THE DEFENDANT: I not totally disagree with the verdict I come out I received and convicted. But I am, you know, I respected their verdict, but I do not totally agree because based on the under oath initial grand jury interview, the nurses were confused because it was a lack of understanding of medicine. But I am truly respect, honor Judge Campbell's fairness and, you know, try to understand both side because this case was very complicated.

I fully responsible. I managed my business poorly because I was very, very busy, and I had a lack of support.

And I am not denying my responsibility at all. I learned very cost experience, but this will help my future to avoid this mistake because I didn't supervise it carefully. And I was focused on patient care, truly only patient care, and I didn't pay attention how this, you know, billing issues and incorrect documentation and lack of supervisor role cause this much trouble because practically every aspect of my life, but also I gained spiritually incredibly. So I lost one thing, but I gained another part.

I lost patient care which was my dream all my life. And I was very frugal. I saved all the, you know, hard work money. I lost them all. I lost -- I studied very hard with language difficult. At the present time I lost, I surrendered my medical license and my practice. And the last one I didn't want to lose, but I lost my marriage life too.

But this is a lesson I have to learn, so I willing to go for it whatever given, you know, the sentence. I respect and I appreciate it, and I am looking for the purpose of why this happened to me.

And one thing I want them to know about the medical condition is not simple. Particularly dying patient is not easy because you -- what my goal was, they want to prolong their life, and I want maintain the quality of life. I don't know how they perceived, but I did, and I did very brief time I was grateful I was able to save a lot of lives

and my patients' lives, saved a lot of patients' lives.

For instance, Jack Simpson was good patient. He was a very cheerful, nice patient. I agree with the family. But when Universal Insurance Company announced bankruptcy and they didn't pay, I continued treating him. I had a second opinion. They said patient has very aggressive disease spread bone and liver and put in hospice care. I continued with my own money provided 5FU infusion, but he left, so a lot of cases.

And then Delores DeWitt, she had surgical complication and wound didn't heal and ruptured intestine. And then she her cause of death was surgical complication, not chemotherapy.

But I know they are upset. They are angry. But there is a lot of misunderstandings, and I wasn't really bad doctor. And I did my best I could, but I didn't manage it well. And I am willing, ready and gladly learn my lesson, and I respect judge's decision.

THE COURT: Thank you, ma'am. You can be seated. I will hear from the government, and then, Ms. Thompson, you can summarize your position, if you want to go ahead and summarize it now.

MS. THOMPSON: I was going talk about release.

THE COURT: Okay. Go ahead.

MS. THOMPSON: Your Honor, I would just ask that

she please be allowed to self report. Up until now, she has made absolutely every court hearing. She is here today. Knows that she could go into custody full well today. She still appeared.

When she received the indictment that she was charged under, the other indictment had been dismissed. When she received notice of this indictment, she was in Korea. She voluntarily came back from Korea to be here. It makes a difference, Your Honor, to Dr. Moon at this point whether she voluntarily surrenders at the place of incarceration or she is taken into marshal's custody. It does have an effect on her prison life, on her sentence calculation and on her treatment. And Your Honor, at this point that is what she is looking -- I mean that is going to be the most important things to her. And so we would ask that she please be allowed to self report to wherever she is going to be incarcerated.

And certainly the government has her passport. There is no danger of anything else. So I would ask that she be allowed to self report.

I also have this is receipt showing that she has paid her special assessment fee, and like to make that part of the record, Your Honor, as an exhibit.

THE COURT: Okay. You can hand it to the court clerk.

MS. THOMPSON: It will have affect also on her classification information. She would like to go to Fort Worth to the appropriate placement in Fort Worth I forgot -- Carswell. So that's where she would like to be incarcerated if possible.

I'd like to be heard about sentencing.

THE COURT: I will let Mr. Williamson go first since he has the burden.

MR. WILLIAMSON: Thank you, Your Honor. I guess first of all I will talk quickly about voluntary surrender and release. The same reasons that the government requested detention after trial will request now. The burden is on the defendant in the circumstance pursuant to 18 U.S.C. 3143(a) to prove that she is by clear and convincing evidence that she is not a risk of flight. As we moved after trial simply taking away her passport in no way removes the possibility of flight from this country. Defendant obviously has strong ties in other nations, other countries. She is, I assume, about to be sentenced to some significant term of years regardless of whether guideline sentence or not which would give hear strong incentive to flee, so the government moves that she should be detained after the sentencing procedure.

With respect to the sentence itself, Your Honor, the defendant's recent -- the defendant's comment she just made up here to the Court was a remarkable comment. It is a

complete absence of responsibility or remorse for what took place and what this Court heard over two and a half weeks during this trial in December took place in her offices where she repeatedly for a two-and-a-half-year-period ordered her nurses to give partial doses of Procrit to her patients. And the Court heard Dr. Rothenberg testify during that trial that Procrit works in proportion to how much it is given. So by giving partial doses of Procrit to patients, the defendant was specifically ordering her nurses to limit the red blood cell-increasing properties of Procrit that her patients would otherwise receive.

This was not a billing error. This was not a failure to supervise her nurses properly. As this Court heard day after day during the trial, this was the defendant's intentional, willful conduct to deny 69 of her patients of the appropriate chemotherapy side effect reducing effect of Procrit.

Moreover, with respect to Taxol and Camptosar, again this Court heard the testimony during the trial that the defendant gave barely 50 percent of the Taxol that she claimed to have given her patients. She gave barely two-thirds of the Camptosar she claimed to have given her patients.

As a result, there are many families like the DeWitts, like the Simpsons, like the Smiths who will never

know whether or not their loved ones received the appropriate doses and if they had what would have happened to their loved ones' life expectancy had they received that appropriate medication.

And as the Court heard again repeatedly during that trial, Dr. Moon mixed all of that medication and Dr. Moon ordered all of that medication. That was not a billing error. This was not a failure to supervise. This was not the nurses' fault. This was Dr. Moon's fault. And the jurors' verdict resoundingly rejects everything that Dr. Moon said when she stood up here. And the fact that even after the jury verdict and at this important sentencing hearing the defendant fails to recognize that this was her own intentional conduct that caused this verdict is, frankly, shocking that at this juncture of this proceeding that's what her response would be. And I think it actually goes very directly to the factors contained in 18 U.S.C. 3553(a) which inform the Court on how to sentence the defendant and the government would submit where in the guidelines range the defendant should be sentenced.

The nature -- A1 is the nature and circumstances of the offense and the history and characteristics of the defendant. As the Court is well aware, the nature and circumstances of this offense are about as serious as they possibly could be. It involves an oncologist entrusted with

the life-threatening care of her patients, willfully denying those patients the care that she claims she was giving them. The care she claimed she was giving them was the care that is the highest standard of care, as Dr. Rothenberg testified. So she was willfully giving them something else and not talking to them about it.

Now, as Dr. Rothenberg testified, there are circumstances under which different doses can be given but only with full consultation with the patient. This was Dr. Moon making a decision on the patient's behalf for a lower dosage without ever informing the patient that was what was going to happen. Moreover, as a number of witnesses pointed out today, doing it not because she felt the patient would get a better result because of that, but instead out of some apparent sense of greed in that she continued to bill for the full amount and administer a far lower amount.

So the nature and circumstances of the offense are within the context of fraud offenses, the government would posit are about as serious a fraud offense as you can possibly create.

And the need for sentence imposed, which is A2, to reflect the seriousness of the offense which is obviously strong, but also to afford adequate deterrence to criminal conduct and to protect public from further crimes of the defendant, the defendant's failure to recognize the gravity

of her own conduct and the fact that this own conduct stems from and was conducted entirely by herself, not by her billing staff and not by her nursing staff, shows the need, Your Honor, for a strong sentence.

So the government would submit a guideline sentence is appropriate in this case and that within the guideline range, the sentence should be at the upper end of the guideline range to reflect the incredible seriousness of the defendant's conduct in this case.

THE COURT: Thank you. Ms. Thompson.

MS. THOMPSON: Yes, Your Honor. The guidelines are only one of the statutory considerations that the Court takes into -- that the Court considers when deciding a person's sentence. The Court can also give downward departures for different reasons, upward departures.

Your Honor, we would ask that in this matter, there are twenty -- approximately 24 letters from different patients that have been made part of the record that adore Dr. Moon, that were grateful to her for her care. And I would ask that the Court balance those with the testimony the Court has heard from other patients' families and in that matter give her a sentence that is going to be not based so much on emotion, that's going to be more based on the facts and the consideration at trial.

Your Honor, the time and place for a personal

injury suit, for a tort matter is civil court. It is not criminal court. And I would ask that based on that the Court consider that carefully and please give Dr. Moon reasonable sentence, a sentence that shows mercy and justice.

THE COURT: Let me make sure I understand what you are asking me to do so the record is clear. Are you asking for a sentence below the advisory guideline range under Booker, and are you also moving for a downward departure, or are you simply asking me to balance all of those things? It is important for appellate review. I just want to make sure I understand what you are asking for.

MS. THOMPSON: I think that I am asking for a sentence -- obviously there is a statutory maximum in this matter which does not fit with the guidelines. I am not asking for a departure, but what I am asking is that the Court balance as mitigation in considering or maybe just towards the weight. What I am asking is that the Court put towards the weight of the evidence the Court has heard in forms of letters and testimony from patients, balance that with the weight of the letters that we have provided from other patients in terms of determining what is appropriate there.

THE COURT: I read every letter as they came in from both sides of the lawsuit, so I am aware of what you are referring to.

MS. THOMPSON: Okay.

THE COURT: Anything else anybody wants to say about anything else?

MR. WILLIAMSON: Not from us, Your Honor.

MS. THOMPSON: After the Court announces the sentence, I do have some other items I'd like to address in terms of appeal counsel, things likes that.

THE COURT: All right. Dr. Moon, if you'd come up to the podium with counsel, I will impose sentence.

Dr. Moon, it is the judgment of the Court that the following sentence be imposed. You are hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 188 months. It is broken down as follows.

I am sentencing you to 120 months on Count One and 68 months on Count Two. The 68 months is consecutive to Count One for the total 188 months sentence.

On Count Three, I am sentencing you to 120 months which is concurrent with the other counts.

And on Count Four, 60 months concurrent with all the other counts.

I will recommend to the Bureau of Prisons that you be incarcerated near Fort Worth, Texas if it is consistent with your security classification.

In terms of supervised release, I am going to

order a two-year period of supervised release with the following special conditions.

First is that you have to pay $432,238 in restitution. Restitution is due immediately, but at a minimum you have to make a restitution lump sum payment of $271,000 upon the sale of the property on Channing Lane in Crossville.

While you are incarcerated, restitution has to be paid through the Bureau of Prisons inmate financial responsibility program. And should there be an unpaid balance when supervision commences, you have to pay at least ten percent of your gross monthly income towards restitution.

No interest will accrue, and you have to notify the Court of any significant changes in your economic circumstances that affect ability to pay.

I am waiving the drug testing requirements since there is no evidence that you have illegally used controlled substances.

You are prohibited from owning, carrying or possessing a firearm.

You have to furnish all financial records requested by the probation officer until all the restitution is paid. You cannot incur any new debts or open additional lines of credit until all of the restitution is paid.

You are barred from engaging in any occupation,

business or profession in the healthcare industry while you are on supervised release.

You have to cooperate with DNA collection, and you cannot travel outside the United States absent prior consent of the probation office. That's not in the recommended conditions, but I think it is appropriate, and I imposed it earlier for post-conviction supervision.

In terms of standard conditions of the Court on supervised release, they also apply. You cannot commit another federal, state or local crime.

You can't leave the district without permission.

You have to report as directed.

You have to be truthful to the probation officer.

You have to meet your family responsibilities.

You have to work regularly at a lawful occupation unless excused.

You have to notify the probation officer at least ten days prior to any change of residence or employment.

You cannot excessively use alcohol or use any controlled substances that are illegal. You cannot frequent places where controlled substances are illegally sold or used.

You cannot associate with persons engaged in criminal activity.

You have to permit the probation officer to visit

you and confiscate any contraband that's in plain view.

You have to notify the probation officer within 72 hours of being arrested or questioned by law enforcement, and you cannot enter into an agreement to act as an informer without Court consent.

And you have to notify third parties of risks that may be occasioned by your criminal record, particularly as it relates to employment.

I am waiving the drug testing requirement.

And you cannot possess a firearm, and you have to notify the U.S. Attorney's Office within 30 days of any change of name or residence until all monetary sanctions are paid.

In terms of fines, the $400 special assessment is imposed. The record reflects you have already paid it. I am required to impose it.

In terms of additional monetary fines, in my opinion when you balance the large amount of restitution owed, $432,000, the fact that you will be getting a long sentence, over 15 and a half years, that most of your assets are held jointly with your husband or others and the fact that you can't practice medicine, you effectively don't have an ability to pay any further fine, and I think it is more important that the restitution be paid expeditiously. So I am not imposing a fine other than of course the restitution

amount you owe.

In terms of restitution, it was a condition of supervised release, but to make sure that there is no ambiguity about it, it is also a condition of your sentence. So the $432,238 in restitution is part of the judgment in the case.

I have considered the advisory guidelines. I have considered all of the evidence presented. I have considered the factors in 18 U.S.C. Section 3553(a) and everything that has been presented to the Court and have sentenced you within the advisory guideline range because in my opinion it is reasonable in this case.

I have sentenced you to the 188 months because of essentially two key reasons. The first is the advisory guideline range exceeds the statutory maximum for any one count, and I have imposed concurrent sentencing. And in addition, you have no prior conviction. And in my opinion, all things else being equal, the top of the range is more suitable for repeat offenders, and you are not a repeat offender.

You have a right to appeal.

THE DEFENDANT: I may not appeal, Judge, because I do not have financial condition to appeal so --

THE COURT: Well, let me tell you what your rights are in that regard. You have a right to appeal both your

conviction, and you have a right to appeal this sentence. You need to file a notice of appeal within ten days. If you direct your attorneys to file a notice of appeal, they will file a notice of appeal. If you ask the Clerk of Court to file a notice of appeal, he will file a notice of appeal on your behalf.

If you are unable to pay the cost of an appeal, you can apply to appeal as a pauper. And if you qualify, then you can appeal as a pauper. And what you will need to do in that regard is, Ms. Thompson, she will need to file an affidavit that would reflect her status of unable to pay the cost of an appeal.

But if you want to appeal, go ahead and file that appeal and file your affidavit as to what your financial status is. And if it is appropriate, then you will be granted leave to appeal as a pauper.

Let me make sure based on your response I want to make sure I cover this very clearly. You can appeal your conviction. You can appeal your sentence. And you must file a notice of appeal within ten days from today when judgment is entered. If you are unable to pay the cost of appeal, you can apply to appeal as a pauper. And if you so request, the Clerk of Court will prepare and file a notice of appeal on your behalf.

So don't be deterred by financial circumstances.

If you feel like you have grounds for appeal, then you should appeal. Of course that's a decision you and your lawyers need to make, and I am not encouraging you to do one or the other other than to very directly tell you what your rights are.

Ms. Thompson, you said you wanted to raise some other things.

MS. THOMPSON: Yes, Your Honor, for the record, I was not retained for the appeal. So I wanted to know if either I could withdraw -- she had asked that I request counsel for her, appointed counsel. You said we need to do that by an affidavit.

THE COURT: Well, my understanding of Sixth Circuit procedure is that trial counsel or counsel at sentencing, the last lawyer standing, so to speak, has to move to be relieved in the Court of Appeals. That there is a presumption that you would continue to represent Ms. Moon.

If you are telling me the two of you have a conflict and she does not want you to represent her, that's a slightly different situation. But if she qualifies for appointment of counsel, certainly CJA counsel will be appointed, and it would appear to me logical that you be appointed unless the two of you have some kind of conflict. You are now very familiar with the case.

Do you have a request in that regard?

MS. THOMPSON: No, Your Honor, I don't have a conflict.

THE COURT: Okay. Of course the threshold question is her IFP status, and I need her to file an appropriate affidavit.

Ms. Moon, do you have any objection to Ms. Thompson continuing to represent you on appeal?

THE DEFENDANT: Is it court-appointed?

THE COURT: Well, my question is based on in the event you qualify for court-appointed counsel, do you want Ms. Thompson to be that lawyer?

THE DEFENDANT: Oh, yes. She knows my case.

THE COURT: Okay. All right. Then the only thing you need to do is file that statement, and I will evaluate it. I am uncomfortable making that judgment without a sworn financial affidavit.

Is there something else you wanted to raise?

MS. THOMPSON: No, Your Honor.

THE COURT: I need to make a decision about surrender, but is there anything else, Mr. Williamson, I may have overlooked?

MR. WILLIAMSON: Not to my knowledge, Your Honor.

THE COURT: I think this is a difficult issue. On one hand Dr. Moon has been here every time she has been asked to be here.

On the other hand, she has other countries she has lived in and can go to, and there is she is facing a long sentence, and that always raises issues of flight. There has been some dispute about whether there was a previous violation of conditions of release.

The standard is set out in 18 U.S.C. 4133, and it generally provides that a defendant sentenced to imprisonment shall be detained immediately unless the Court finds by clear and convincing evidence that the defendant is not likely to flee or pose a danger to the safety of any person or the community.

I think in light of the lengthy sentence and ability to live elsewhere, I am going to detain Dr. Moon because I think that the standard has not been met by clear and convincing evidence that Dr. Moon will be remanded to the custody of the marshal rather than self surrendering.

Is there anything else that we need to talk about?

MR. SIMMONS: Your Honor, since she has been remanded to custody, there is an issue as to her indigency, will she go then to the custody of the marshal and she is going to be in the pipeline, would it be possible to set that matter for a hearing before this court perhaps in the morning as to her status as to indigency before she gets out of the jurisdiction? We'll have to fill out the financial

affidavit, have the Court make a determination quickly as to her status.

THE COURT: Well, let's do this. If Dr. Moon is willing to testify under oath right here and right now that she doesn't have the financial ability to employ counsel and then we'll supplement that representation with a sworn affidavit, then I will consider that having been satisfied.

MR. SIMMONS: Okay.

THE COURT: Are you willing to do that?

THE DEFENDANT: Yes.

THE COURT: All right. I need to tell you that it is a federal crime to misrepresent things to the Court. You need to be aware of that. Raise your right hand, please, ma'am. Mrs. Bush will swear you in.

(Defendant sworn.)

THE COURT: Dr. Moon, do you have the ability to employ counsel financially to represent you on appeal?

THE DEFENDANT: At the present time until my house is sold.

THE COURT: Is the answer no or yes?

THE DEFENDANT: Well, conditional because I have to sell my house. And my house is sold, then possibly. The house is not sold, I have to wait.

MS. THOMPSON: Could I say something --

THE COURT: Yes.

MS. THOMPSON: -- on her behalf. First of all, she is involved in a divorce currently, and all her real property is held as joint property. So first of all, she doesn't know what percentage of that real property is going to be hers to do with as she chooses. That's up to the divorce court.

Next, today the government has served upon her a False Claims Act which I am sure will carry some serious financial penalties. And the Court has made part of its judgment this claim on this house in Crossville. So, Your Honor, I think based on the fact that that's going to be a lien on the house, the fact that she has this false claim and that she doesn't have clear title to any of this property is interfering with her real ability to hire counsel. Of course the appeal has strict timeline on it.

THE COURT: Here is how I am going to resolve it. Based on at a minimum she does not currently have the resources in the next ten days to hire counsel that Ms. Thompson you will be appointed as counsel under the CJA. If her financial circumstances change, you have a duty and she has a duty to inform the Court, and that could affect your continued representation. But I think it is important at this stage that if she wants to appeal that that appeal get filed. That's a very important thing. And I want to give her the opportunity to do that as I would every criminal

defendant. And of course if this Court has made any errors, the Court of Appeals should correct them. That's how the system works.

Anything else that we need to take up?

MR. SIMMONS: No, Your Honor.

THE COURT: All right. Mr. Fielder, you may take Ms. Moon into custody. Thank you.

REPORTER'S CERTIFICATE

I, Cathy B. Leigh, Official Court Reporter for the United States District Court for the Middle District of Tennessee, with offices at Nashville, do hereby certify:

That I reported on the Stenograph machine the proceedings held in open court on April 24, 2006, in the matter of UNITED STATES OF AMERICA vs. YOUNG MOON, Case No. 2:05-00003; that said proceedings in connection with the hearing were reduced to typewritten form by me; and that the foregoing transcript (pages 1 through 139) is a true and accurate record of said proceedings.

This the 29th day of June, 2006.

/s/ Cathy B. Leigh
Cathy B. Leigh, RDR, CRR
Official Court Reporter